

Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761114657984>











J-16



J-16

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 17 September 2001

# Journal des débats (Hansard)

Lundi 17 septembre 2001

**Standing committee on  
justice and social policy**

Nutrient Management Act, 2001

**Comité permanent de la  
justice et des affaires sociales**

Loi de 2001 sur la gestion  
des éléments nutritifs



Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.





## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Monday 17 September 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Lundi 17 septembre 2001

*The committee met at 1000 in Purvis Hall, Kemptville.*

## NUTRIENT MANAGEMENT ACT, 2001

LOI DE 2001 SUR LA GESTION  
DES ÉLÉMENTS NUTRITIFS

Consideration of Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts / Projet de loi 81, Loi prévoyant des normes à l'égard de la gestion des matières contenant des éléments nutritifs utilisées sur les biens-fonds, prévoyant la prise de règlements à l'égard des animaux d'élevage et des biens-fonds sur lesquels des éléments nutritifs sont épandus et apportant des modifications connexes à d'autres lois.

**The Chair (Mr Toby Barrett):** Good morning, everyone. I wish to welcome you to these hearings of the standing committee on justice and social policy for Monday, September 17. We're very pleased to be here at Kemptville College. I think it's quite fitting to have hearings on nutrient management in an agricultural college in the town of Kemptville.

As many know, we are conducting hearings on Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts. This committee has been travelling the province, travelling rural Ontario and small-town Ontario. This may well be the first visit of the Ontario Legislature to Kemptville; I'll leave that up to the historians.

As our committee has travelled Ontario, wherever we went—as Chair, I feel I speak on behalf of the NDP, the Liberal Party and the Conservative Party—we have seen communities overwhelmed with the horrific images in the United States. Through this committee, we extend our sympathies to our friends in the United States. This committee on Friday was holding hearings in Owen Sound and conducted a formal period of silence to commemorate what has happened down there.

## ISO FARM AND ASSOCIATES

**The Chair:** We have agendas available. Our first order of business is a delegation. I wish to call forward to our witness table ISO Farm and associates. Do we have representatives here? Good morning, gentlemen. Have a seat. We have microphones available. For organizations, we have 15 minutes. The members of the committee do wish to make comments or ask questions. We encourage people, if they can, to wrap up before that time to incorporate questions or comments within the 15 minutes.

For the purposes of our Hansard recording, we'd ask you to give us your names first, and then proceed.

**Mr Derrick Moodie:** My name is Derrick Moodie. I'm a farmer in Carleton county, as well as doing some independent consulting work within the agricultural field relating to identity preservation and agricultural biotechnology.

**Mr Mark Junkin:** My name is Mark Junkin. I'm an agricultural consultant with the firm ISO Farm Inc. We're a firm with the initiative to reduce the cost for farmers to implement ISO 14000 in agricultural operations.

**Mr Moodie:** First of all, I'd like to thank you, Mr Chairman, for allowing us this opportunity to present to you today. What we'd like to do in our brief presentation is give you a bit of background information on ISO, and ISO 14001 in particular, and how it might impact agriculture within the province. In order to do that, we're going to give you a brief background on the ISO and the ISO 14001, and then we're going to run through some of the impacts that this will have directly on agriculture.

I guess now I'll turn it back over to Mark Junkin.

**Mr Junkin:** ISO started after the Second World War. It started as an engineering society concerned with the standardization of measurement across the world. It has evolved such that its initiative now is focused on the development of standards across the world, standard expectations. I'm certain all the members here are familiar with ISO 9000, which is a standard with service and manufacturing industries across Canada: say what you do; do what you say. It's standardized expectations of products and services.

ISO 14001 is an initiative created in 1996. Canada was a leader in the development of this program. Basically, it's environmental quality assurance. So it's a program



where an operation would state its impact on the environment, specify which are the specific impacts that have the most significant impact on the environment, and develop a program of how to mitigate that over a period of time. It involves a third-party auditor to ensure that the program is being implemented as planned and involves a process of continuing improvement.

ISO 14000 was looked at in 1998 by the Ontario Federation of Agriculture, the University of Guelph's farming systems group, as well as the Ontario Ministry of Agriculture, Food and Rural Affairs, as being a program that could be a possibility for Ontario agriculture. After doing a case study, it was determined that it was cost-prohibitive to implement in Ontario. Out of the five farms that started this program, only one farm completed it, and that was in Simcoe, the Norfolk tender fruit packing plant. I have read these reports and looked into this program, and as I stated previously, I have the vision that this is a cost-effective program if a suitable environmental database is created that would reduce the amount of time that farmers would need to search for information. Derrick?

**Mr Moodie:** To briefly outline some of the impacts that ISO 14001 could have on agriculture in Ontario, there are a few key benefits that would be achieved, not only by producers but by rural residents, as well as rural agribusinesses that are dispersing nutrient or biosolids on to agricultural lands.

One of the primary benefits is a reduction in liability. Through being notified of the most significant possible environmental hazards on any of these agricultural practices, it enables a farmer to prioritize the projects that he needs to look after to minimize his environmental impact. Also, through showing due diligence and showing that due process has been taken with regard to environmental impact, it enables that farmer to reduce his liability if an incident were ever to occur.

For the progressive agricultural producers adapting ISO 14000, it would not only reduce liability, but it would also give a more proactive image in the rural community, improving the perception of the environmental practices of that operation.

Another key area of benefit is marketing. Through product differentiation, extra margins can be gained, and extra premiums for providing a premium product that has been produced in an environmentally sound and sustainable manner.

In March of this year, the federal agricultural minister, Lyle Vanclief, recognized that ISO 14000 is recognized by buyers and consumers who are looking for assurances that goods and services have been produced in an environmentally sustainable manner. I think that goes to support the fact that consumers are aware of what ISO 14000 is, and those who aren't now are increasingly becoming so.

Another key benefit is the value-added programs that could be achieved through this, not only through increased efficiencies by appropriate resource allocation that would come from increased knowledge of the

environmental impact; there are also potential opportunities coming down the pipe through areas such as carbon exchange credits or carbon sequestration. In a program where carbon sequestration would be used, where farms could be used as carbon sinks, their environmental impact will be required, and it would be a smaller step to gaining ISO 14000 after obtaining the information that would be required for carbon sequestration.

Finally, ISOfarm's vision for the Nutrient Management Act: ISOfarm, myself included, doesn't really see ISO 14001 as being something that's required by every producer. It's something that we see as being a potential for proactive producers who are looking at taking a lead or filling niche markets or are large enough to make this make sense to mitigate their environmental liabilities.

#### 1010

Ideally, this bill will not only create minimum standards, but will help the industry to evolve and implement an environmental management system for continual improvement. Having legislation that is adaptable will eliminate the need to continually introduce new legislation to ensure a healthy rural environment. ISO 14000 is something that supports that. It's something that promotes continual improvement on farms without requiring continual legislation changes to make the regulations more and more strict.

At this time, Bill 81 does not express any reference to ISO 14001. We'd like to encourage the governing bodies to reconsider this position. Due to the global recognition of ISO's high standards, we suggest that it be given equivalent standing to any provincial programs that are developed.

ISO 14000 certification allows a producer to show that he has taken due diligence within the highest class of environmental stewardship. We think that with any nutrient management programs the government is developing, if ISO was considered equivalent it would provide an extra value to some producers.

I'm going to turn it over to Mark Junkin to briefly highlight some of the appendices that are attached to the back.

**Mr Junkin:** The letter Lyle Vanclief wrote in support of our organization is the last page of this handout. You might want to read that later on.

In the appendix I've basically just pulled out a few sections of ISO 14001's documents. Specifically, in the development of environmental policy, the policy has to be appropriate to the nature of the operation. It includes a commitment to continual improvement and to comply with environmental legislation; provides a framework for setting and reviewing environmental objectives and targets; is documented and implemented and communicated to all employees; and is available to the public.

I'm going to read the whole section on environmental aspects:



Section 4.3.1: the organization shall establish and maintain a procedure to identify the environmental aspects of its activities that it can control and over which it can be expected to have an influence. The organization can then determine those aspects of its operations that have or can have significant impacts on the environment. The organization shall ensure that the aspects related to these significant impacts are considered in setting environmental objectives.

Section 4.3.2: the organization shall establish and maintain a procedure to identify and access legal and other requirements to which the organization subscribes.

Section 4.4.2, training awareness and competence: I'll take two seconds out of that. It shall be required that all personnel whose work may create a significant impact on the environment must have received the appropriate training. Personnel performing the tasks that could cause significant environmental impacts shall be competent based on appropriate education, training and/or experience.

Section 4.5, checking and collective action, ISO 14001: the organization shall establish and maintain documented procedures to monitor and measure, on a regular basis, the key characteristics of operations and activities that can have significant impacts on the environment.

The management review: the organization's top management shall, at intervals that it determines, review the environmental management system to ensure continual suitability, adequacy and effectiveness.

**Mr Moodie:** In closing, I guess all we really have to say is that we feel that ISO 14000 fills in some of the shortcomings of the environmental farm plan. The environmental farm plan has been very successful to date in raising awareness of environmental concerns on farms, but it doesn't have the follow-through of continual improvement that ISO 14000 has.

Looking through some of the documentation that has been provided by OMAFRA and the Ontario Legislature, basically all of your goals that have been outlined seem to be pointing toward ISO 14000.

I guess we'll wrap it up.

**The Chair:** Thank you for that presentation. We've pretty well used up the time unless any member wants to make a quick comment. Yes, Mr Peters, the Liberal Party.

**Mr Peters:** We're in day seven of our stops. What we've heard constantly is that the potential exists for some major capital improvements, so we're talking dollars for farms. Right now you've just talked about a \$70,000 cost in 1998, so it's like we're going to see capital upgrades and then the costs for this program. You've said that you've reworked some things. What would the costs possibly be down to now to undertake this program?

**Mr Junkin:** The goal with my firm is to reduce the cost down to \$2,000 per farm over a five-year period for this environmental management system to be in place. I think that when we're talking about capital expenditures

we have to have a management system in place so that the measures taken on a farm are used strategically.

**The Chair:** We should move on. Mr Junkin, Mr Moodie, we wish to thank you for coming before the committee.

## SOUTH NATION CONSERVATION

**The Chair:** For our next order of business, I would ask South Nation Conservation to come forward, please. Do we have a representative here? Yes. Have a chair. We have 15 minutes. If you could give us your name for the Hansard recording.

**Ms Mary-Ann Wilson:** Thank you. I'm Mary-Ann Wilson. I'm with South Nation Conservation. I'm representing our organization and we've consulted with our board of directors and our clean water committee on the submission that I'm bringing forth today. Thank you. I've passed out some of my speaking notes, and I will follow along with those for you today.

First of all, I'd like to take a little bit of time to give you a bit of background about agriculture and our watershed; about our organization, the conservation authority; and about our clean water committee.

Agriculture is essential to the economy of eastern Ontario. A recent study of agriculture in the five counties of Stormont, Dundas, Glengarry, Prescott and Russell shows that there was \$1.12 billion in agricultural sales in this area. This is greater than New Brunswick and Prince Edward Island combined. We know that over 60% of the land area in our watershed is under agricultural production. Trends in agriculture are to consolidate and expand. However, the rate of intensive agricultural operations being established, as experienced in Huron county and parts of southwestern Ontario, has been significantly less in eastern Ontario to date.

Overall, we recognize that the province requires a proactive approach to ensure that new or expanding agricultural operations protect surface water and groundwater. Bill 81 does provide a means to achieve this, but we feel that it will be dependent on the regulations that actually come out of this legislation, which remain to be established.

Agricultural land use practices impact the groundwater and surface water by contributing contaminants such as pathogens, sediments, pesticides and nutrients. All sizes and types of farm operations have the potential to impact water, with perhaps a greater risk associated with some of the intensive agricultural operations. Studies in our watershed have shown that over 90% of the nitrogen and phosphorus loadings that come into the South Nation River come from non-point sources such as stream bank erosion, manure management and storm water runoff. As the predominant land use in the South Nation watershed, agricultural practices do impact our water resources.

We've also had a recently completed study, the eastern Ontario water resources management study, that identified areas of groundwater vulnerability. It also showed areas where agriculture is concentrated across the



landscape. In some cases, it's been shown that agricultural activity does coincide with our sensitive areas. I think overall, then, our agricultural best management practices must consider our local site characteristics in their water protection planning.

There is a need for the province to address existing farm operations and require a whole-farm planning approach which includes all potential contaminants. Bill 81 and the regulations should be broadened to incorporate this. The current nutrient management plan, as recommended by the Ontario Ministry of Agriculture, Food and Rural Affairs, only includes nutrients and there is no consideration for the watershed characteristics; for example, groundwater recharge areas. So, similar to what is proposed in Bill 81, the implementation criteria for the other contaminant sources could vary, dependent on the risk.

1020

Overall, agriculture has the potential to impact on the environment, with the degree of risk dependent on the farm's location relative to the watershed characteristics—for example, the groundwater recharge area—and the size, type and management of that operation. Obviously, a strategy to address agriculture and the protection of our water resources requires a comprehensive approach, an approach beyond simply nutrient management.

As I mentioned earlier, our clean water committee has been very instrumental in our water programs in our watershed, and they very effectively direct our water quality programs within our watershed. The programs that we're involved with include research, for example, water quality modelling; demonstration projects, for example, constructed wetlands; information and education initiatives; fundraising; and our clean water program, which is one of our key programs that offers grants for water quality protection projects. Our clean water committee is a multi-stakeholder group. We have agriculture represented, industry, municipalities, the province—Ministry of the Environment, Ministry of Agriculture and Food—as well as South Nation Conservation.

The grant program that we provide offers grants for water quality protection projects for wells, septic systems, as well as many agricultural initiatives: manure storages, livestock fencing, stream bank erosion. The priority that goes for funding is to those with the most water quality benefit. We've completed over 247 projects, with over \$1 million in grants being distributed since 1993. This program is funded by our municipalities, by a South Nation Conservation levy, and by a donation from Parmalat, a milk processing plant here in Winchester. Recently, we received funding from the Agricultural Environmental Stewardship Initiative sponsored by Agriculture and Agri-Food Canada to expand our program. So it's a broad-based program in our funding as well.

It is recognized that the proposed Bill 81, Nutrient Management Act, is an important part of a comprehensive approach to working with agriculture in

protecting water resources by providing a framework for the comprehensive management of nutrients in the province. The regulations are not available for review at this time. It is felt that the specifics of those regulations will dictate what the actual impact will be on protecting our water resources. We believe the potential exists to broaden Bill 81 to address other potential contaminants and suggest that this be included directly in Bill 81.

We support Conservation Ontario's recommendations as presented and submitted to you on September 11 at the St Thomas session, and I will not repeat those at this time. Rather, I'd like to offer some specific comments as a result of our experience in working with our partnerships on agricultural water quality program delivery in our watershed.

First, we believe the risk-based strategy proposed is a common sense approach. We would suggest that it requires that you address the agricultural operation's size and type as well as consider the watershed location, specifically areas vulnerable to water contamination.

Another point is that there will be a variety of tools required, including regulations, standards and guidelines. These must be established in consultation with all the parties involved, as you are well aware: the province, agriculture, municipalities and conservation authorities. Implementation of Bill 81 must provide a framework which is cost-effective and practical to implement for agricultural producers as well as implementers and to achieve our water protection objectives.

We would like to emphasize that all regulation implementation must have a reasonable phase-in period to allow an opportunity to budget and plan on the farm.

In addition, financial assistance should be provided to help farmers with the implementation of these regulations. Without financial assistance, we're concerned that many smaller operations will be forced to sell their farm operation or will amalgamate with others and result in more intensive farm operations with perhaps larger environmental risks.

Financial assistance should be coordinated through existing programs such as the proven South Nation clean water program rather than developing yet another program within our area.

We would like to see proactive and reactive enforcement. Proactive enforcement is more positive and it allows the operators to receive technical assistance to help them implement appropriate practices. Provincial enforcement will provide that consistent approach across the province, and we're pleased to see that.

Additionally, there will be locally based staff resources required to implement Bill 81 and the regulations. This might include expertise such as agricultural engineers, agronomists, conservation technicians and enforcement staff.

Overall, we feel there needs to be a consistent approach across the province. From our viewpoint, it is unclear whether the act will override all existing municipal nutrient management planning bylaws or if the municipalities will be allowed to impose restrictive



bylaws in addition to the act. If allowed to impose more restrictive bylaws, we return to an inconsistent approach across the province. In addition, if the province were to delegate some of the delivery of Bill 81 to our municipalities, there may be a risk that some stress may be placed on an already overloaded system, and it could result also, from that viewpoint, in inconsistent delivery.

We feel there is a need for third party review of all nutrient management plans. Currently, the proposed implementation of the act suggests that smaller operators will be required to complete a nutrient management plan which remains on file at the farm. It's the feeling of our group that all nutrient management plans should be reviewed to ensure they are complete. The third party review standards could reflect the size and risk of the operation. The province could also consider delegating the third party reviews or provide options such as the Ministry of Agriculture and Food, conservation authorities or consultants.

We would like to see the province provide technical assistance to help in the development and implementation of the nutrient management plans. Technical assistance could be offered through the conservation authorities as well and build on the agricultural extension program experience that we have as an option.

The province needs to consult with conservation authorities to ensure that the regulations and standards developed are compatible with the watershed requirements and natural hazards, such as flood plains and unstable slopes. The South Nation River flows through a flat, low-gradient topography and by its nature has a very expansive flood plain. These are highly productive soils under agricultural production. The regulations and standards applied in flood plains would need to differentiate new from existing operations and apply different regulations: for example, new intensive livestock operations' buildings might not be sited in a flood plain, whereas an existing farm may construct a manure storage which meets specific floodproofing standards.

Earthen manure storages are a specific concern in our area. They must be regulated to ensure proper design, siting and construction. Currently, they are a low-cost option used widely in eastern Ontario and are not addressed by the building code. As such, many are not properly designed, sited or constructed, and we feel this poses a serious risk to our water supplies.

In closing, I'd like to thank you for the opportunity to speak with you today. We are a watershed management organization protecting water, and we work in partnerships with our municipalities, agriculture, the province and the rural community. We look forward to being consulted in the future development of Bill 81 and the regulations that will be forthcoming. We'd like to work to develop a positive, proactive solution that is workable for agriculture and protects our water resources.

**The Chair:** Thank you, Ms Wilson. You've just about used up the 15 minutes. There would be about 30 seconds

if there were any comments forthcoming. Ms Munro, briefly.

**Mrs Julia Munro (York North):** On page 2, you talk about the need to have implementation criteria potentially made so that it would vary depending on the risks. I just wondered if you could comment briefly on whether you are satisfied that there is sufficient knowledge and technology to be able to proceed in that kind of direction.

**Ms Wilson:** I believe there's a need for more research and work in some of these areas, but I do believe there's definitely a knowledge base there to begin working from. I think it's very much dependent on all the groups coming together so that we can develop a workable solution. I agree that there needs to be flexibility so that over time, as new information and new knowledge comes forth, that can be incorporated into the process.

**Mr Sean G. Conway (Renfrew-Nipissing-Pembroke):** As I drove down from the Upper Ottawa Valley this morning, I noticed a couple of septic pumpers doing their important work in rural Ontario. Have you any advice to the committee as to how these nutrient management plans and new legislation generally should apply to what I see as a very real problem in rural Ontario and cottage country, that is, the disposition of septage in this new world?

**Ms Wilson:** I would agree. The proposed legislation has indicated that there will be a ban on applying untreated septage directly to our land base. I would agree that's a very necessary recommendation, but I would also add that we need to be very aware that there are alternatives that we need to search out so that waste water management can—

**Mr Conway:** Like?

**Ms Wilson:** For example, our existing lagoon systems would be the obvious place to receive those wastes, but we have to ensure they have enough capacity, so there might be a need for additional infrastructure.

**The Chair:** Thank you, Ms Wilson. We appreciate this presentation from South Nation Conservation.

1030

#### ONTARIO CATTLEMEN'S ASSOCIATION

**The Chair:** I now wish to call forward our next delegation, the Ontario Cattlemen's Association. Good morning, sir. I would ask for your name for Hansard, and we have 15 minutes.

**Mr Dick van der Byl:** Thank you. Good morning. My name is Dick van der Byl. I'm pleased to be here today as president of the Ontario Cattlemen's Association, which represents 25,000 beef producers in the province.

We're encouraged by what we see in the proposed legislation. It appears that the government has listened to the concerns and input of agriculture. We believe it is absolutely crucial that this act and associated regulations meet the goal of environmental protection while ensuring a viable future for agriculture in Ontario.

Farm gate value of beef cattle production in Ontario is estimated at \$980 million; it's second only to dairy. Beef

cattle raised in Ontario provide the raw product for significant primary and secondary food processing sectors serving the consumer, retail and food service segments of the economy. The agrifood sector in Ontario is second only to the automotive industry in gross sales. Agriculture is truly a driving force in the Ontario economy.

On environmental protection, the OCA is actively involved in many programs related to protection of Ontario's environment. We have also initiated many projects focused on water quality. OCA has been a member of the Ontario Farm Environmental Coalition since its inception in 1991. We are committed to making legislation and standards for farming operations effective for environmental protection, as well as practical for farmers competing in a global marketplace.

Industry partners, including all levels of government, need to develop a vision for rural Ontario. As part of this vision, we recommend the expansion and provision of permanent funding for the highly successful and widely accepted environmental farm plan program as a delivery vehicle for funding related to new regulations for agriculture operations.

Contrary to recent press coverage, the Farming and Food Production Protection Act does not constitute a licence to pollute for farmers. Farmers are currently regulated by several pieces of legislation, including the Environmental Protection Act, the Ontario Water Resources Act and the Fisheries Act. Farmers have been proactive with respect to protection of the environment and have taken many voluntary actions. Examples are the environmental farm plans, nutrient management plans and best management practices. These actions must be recognized and encouraged.

As a member of OFEC, we support the development and use of local agriculture advisory committees. These committees must include farmer representation. These committees would be the first points of contact for citizens with concerns related to environmental practices on farms. The committees would play a mediation role and, when necessary, pass cases on to a provincial agency for enforcement.

We also support the concept of an environmental help line to deal with citizen concerns, much like the successful OFAC animal welfare help line that we initiated at OCA a number of years ago, as well as to connect willing landowners with information and resources.

On to regulations: all proposed regulations for agriculture operations must be subjected to both economic and environmental impact analysis prior to implementation. The environmental and economic impacts of regulations for agriculture operations must be known and, where needed, financial incentives and compensations put in place.

The agricultural industry must be provided with sufficient time to evaluate and comment on proposed regulations. A 30-day comment period would not be sufficient.

Categorizing farms: we feel that implementation should be phased in, with the determining factor being total nutrient production and/or use. A timeline of five years would be appropriate.

Using livestock units as a means of categorizing farms is unacceptable. This measurement is weighted toward odour production and is not meaningful for regulations targeted to nutrient and pathogen control. A new measurement must be developed that is specific with respect to actual nutrient production while addressing changes in livestock genetics and management over time.

A very clear distinction must be made between livestock production systems that are confinement-based, such as poultry and swine, and those that are grazing-based, such as beef cow-calf and sheep. For example, regulations related to manure storage of 240 days based simply on number of animals are meaningless for grazing-based operations where manure is spread by the animal itself for most of the year.

We support the requirement for all nutrient managers, not just those in agriculture, to complete a nutrient management plan. These plans need to account for all lands used by nutrient managers, whether they are owned, leased or otherwise.

Because many farmers are not computer literate, nutrient management plans should not be required to be in electronic format. A summary of each nutrient management plan, following a standard format, should be prepared as a public document. Full nutrient management plans may contain proprietary information and should remain confidential other than for audit purposes.

OMAFRA involvement: we feel strongly that OMAFRA should be the lead agency when it comes to the new legislation, including third party reviews, audits of nutrient management plans, and the implementation of these plans. Tied closely to the audit function should be an effective extension component. This will require an increase in resources available to OMAFRA.

Enforcement can only be successful with the following key elements: a consistent approach, qualified and knowledgeable staff, and sufficient resources. OMAFRA, with its qualified staff familiar with Ontario agriculture, should be given responsibility for ensuring enforcement of the Nutrient Management Act.

Financial incentives: financial incentives are essential and must form a major part of the government's overall approach. Changes made with societal benefit as an objective must be funded by society at large.

Costs associated with third party review, audit, hydrological study and facility upgrades must not become an undue burden on producers.

As mentioned earlier, access to funds should be through an expanded and permanently funded environmental farm plan program.

Best management approach: there are likely to be several regulations from which existing operations must be exempted. An obvious example would be the siting requirements of farm buildings with respect to waterways. A great number of barns, built several decades ago,



were sited close to water with good reason. It would be totally impractical to require movement of these buildings.

OCA is currently leading the development of best management practices for buffer strips on farms. This project has all key stakeholders as contributing partners. These include the Canadian Cattlemen's Association; the Dairy Farmers of Ontario; Environment Canada; the Department of Fisheries and Oceans; Ducks Unlimited; the Ontario Federation of Anglers and Hunters; Wildlife Habitat Canada; the Grand River Conservation Authority; the Ontario Ministry of Agriculture, Food and Rural Affairs; the Ministry of the Environment; and the Ministry of Natural Resources.

In addition, OCA and the Ontario Sheep Marketing Agency were recently granted \$150,000 through the agriculture environmental sustainability initiative to implement best management practices on farms with watercourses. These initiatives are evidence of industry concern regarding the protection of our water.

1040

Regulations should not include a requirement for fencing of livestock from watercourses. The Best Management Practices for Buffer Strips on Farms book will identify those situations where fencing is necessary and, for other situations, which best management practices are acceptable as due diligence in protecting water quality. The issue of livestock access to watercourses should be dealt with in individual nutrient management plans to account for individual farm situations. The focus should be the avoidance of livestock standing in water rather than having access to watercourses.

Legal precedence: the issue of capping the size of operations based on number of livestock units is a very real concern to the OCA. A recent OMB ruling stated that municipalities have the right to impose a cap on the size of livestock operations. OCA is involved in an appeal of this decision as it could strike a serious blow to the entire animal agriculture industry in Ontario. Like most other business types, farming has followed a long-term trend toward fewer numbers of producers whose operations are larger in size. This has been driven by the need to compete in a global marketplace. The real issue is not one of size but one of good management, including nutrient storage, handling and spreading on an appropriate area and type of land.

The act currently deals with provincial regulations superseding municipal bylaws. Issues such as the cap on number of livestock need to be addressed effectively through this means.

Municipalities must be prevented from using the municipal Planning Act to set local requirements different from those outlined in the Nutrient Management Act. Such changes would render the Nutrient Management Act futile.

I thank you for the opportunity today to express OCA's opinion on a number of areas of the proposed legislation. The beef industry is committed to protecting

our natural resources and have proven this by our actions over the years. We will continue to work toward the combined goal of environmental protection through economically viable agriculture in Ontario.

**The Chair:** We have just under a minute for each party.

**Mr Gilles Bisson (Timmins-James Bay):** On the third page of your presentation you talk about using livestock units as a measure of categorizing farms as unacceptable. Could you explain that a little more? How would you categorize them if it's not by number of units?

**Mr van der Byl:** I think what we're looking at is really the land base that a producer has or could get a hold of to spread his nutrients on. If he has a large enough land base, and through soil testing and whatever it takes, sees how much nutrients he can put on that land, then using livestock units is not a desirable measure.

**Mr Bisson:** I guess what I'm wondering is, if you are going to categorize somehow or other, you have to bring into the equation the number of livestock units or head of cattle that you have on the farm. I understand that you want to look at the land base as well, but how do you do it without looking at the number of units? How do you categorize that? You have to come up to a number somehow.

**Mr van der Byl:** But if you have a land base and you do your soil testing to see what nutrients this land can take, that will dictate how many livestock you can have on an operation.

**Mr Bisson:** So I think you use both.

**Mrs Tina R. Molinari (Thornhill):** In the last few days that we've been having consultations on this bill there have been some themes that have been consistent in all the presentations, and certainly you cover some of them in yours. One I've noticed is the whole issue around who is going to be responsible for regulating it, which ministry. Will it be OMAFRA or the environment? We've had presentations from those who feel that it should be the Ministry of the Environment, because they feel that's the ministry best to fulfill that role. One of the issues they've raised, actually, is the whole conflict-of-interest issue. In your presentation you're recommending that OMAFRA be the lead agency. How would you respond to those who say that it may be a conflict of interest for OMAFRA to be the lead ministry to enforce the bill?

**Mr van der Byl:** I think in every situation you can have a conflict of interest. Yes, people in Ontario might think that, but it's still a ministry within the government so I don't see why there should be a conflict of interest.

**Mr John C. Cleary (Stormont-Dundas-Charlottenburgh):** Just to follow up on the second page, second paragraph, "The committees would play a mediation role and, when necessary, pass cases on to a provincial agency for enforcement." I just wondered what you were thinking there.

**Mr van der Byl:** That's somewhat how our animal welfare system works. If we get a complaint, then it's passed on to us as producers, and if it's something we

can't handle, then we pass it on to another agency. That's how we would be looking at it. If you have a committee set up and somebody comes with a complaint to that committee, and the committee feels it's something they can't respond to or that it's above them, then it's passed on to another agency or another department.

**The Chair:** Mr Cleary, do you have a supplementary? We should wrap this up.

**Mr Cleary:** Yes. Are you suggesting that be another provincial committee that would be set up to handle this?

**Mr van der Byl:** Depending on, of course, who's going to be handling the enforcement, and I think that's who we would be looking at. But if the committee can't handle it, it would go on to the enforcement agency. We'd like to handle it in our local municipalities, and if it can't be corrected there, then it would have to go on to the enforcement agency.

**Mr Cleary:** I've been asked that question quite a few times. Thank you.

**The Chair:** Thank you, sir. We appreciate the Ontario cattlemen coming before the committee.

#### RUSSELL COUNTY FEDERATION OF AGRICULTURE

**The Chair:** The next delegation on our agenda, Fédération de l'Agriculture du comté de Russell. Good morning, sir. We'll get your name for Hansard. We have 15 minutes.

**Mr Pommerville:** Thank you very much, Mr Barrett.

My name is Rejean Pommerville. I'm a dairy farmer in Russell county and the regional director for the local federation in Russell. I hope everybody has a copy of our presentation? Thank you.

The Russell County Federation of Agriculture appreciates this opportunity to present comments on Bill 81.

The agricultural sector is very important in Russell county, and we are blessed with very good farmers, land and proximity to markets for our agricultural products. The fact that Ottawa is at our doorstep, however, presents a struggle to maintain a vital and vibrant agricultural sector.

The environment, water and nutrient issues are of great importance to the farmers of Ontario and Russell county. Farmers maintain a very good record for land stewardship and environmental initiatives to protect our most precious assets: land, water and air. Several initiatives that farmers have already participated in to date include the environmental farm plan, the grower pesticide safety course etc.

Farmers are expected to do more for society to protect the environment and are more than willing to take on additional responsibility toward this goal. The Nutrient Management Act is asking farmers to prepare nutrient management plans for their farms; however, society and industries must also do their share. If too much responsibility is placed on farmers without financial assistance to help protect natural resources on behalf of

society, the burden of enhancing the environment will be unbearable for a lot of farm enterprises.

Following are some of the issues in the proposed Bill 81, Nutrient Management Act, that are of major concern to the farmers of Russell county.

We agree that the Ontario Ministry of Agriculture, Food and Rural Affairs is right in its quest to develop clear and consistent nutrient management standards to ensure that we live in a healthy and sustainable environment. Farmers should not be the only group required to bear the burden of protecting good farmland for society, nor should farmers bear the burden of paying the total cost of a system being legislated to benefit society in general. We should have every reasonable expectation to make a living from farming without being financially deprived of an adequate standard of living in order to protect the land base, surface water and groundwater for future generations.

#### 1050

The farming industry is simply not capable of carrying extra costs which cannot be passed on to processors and consumers. The ministry must remember that a vast majority of farmers already handle manure and other nutrients responsibly, as a courtesy to their neighbours and to promote productive farming. If the government does not financially assist family farms with the changes this legislation will demand, in the same way it now pays urban municipalities to improve their water and sewer systems, it may be too expensive to farm. It will drive farmers out of business and it will cripple our rural communities.

It is our belief that both provincial and local governments must work hand in hand to ensure good policies with regard to surface water, groundwater and land use. The province cannot allow the continued construction of homes and industries on our best farmland. Farmers produce more than just food; farmers maintain vital communities. Laws that place an additional burden on farmers also place an additional burden on rural communities. Therefore, the government must handle Bill 81 with care to avoid creating an environment that regulates farmers out of farming. The government must ensure that the new legislation allows the family farm to carry on, free from legal constraints and overbearing costs. The ministry must not lose sight of its primary goal: to promote the economic development of rural communities.

Administration should include preliminary and on-going studies on the economic impact of this legislation. It appears that the government of Ontario is planning for the farmers of Ontario to pay the nutrient management administration costs—"the minister may establish fees." The objective of Bill 81 is the protection of our water resource, which is a public resource. Therefore, the public has a responsibility in this process and the payment of fees for application, reviews and certificates by farmers etc should be nominal or zero.

Delegation of responsibilities: some elements of the bill must be administered by provincial agencies to



ensure consistency across the province and not by agencies operating at a local level. To ensure effective consistency, we would strongly recommend that OMAFRA conduct reviews, issue certificates and establish the registry.

Financial considerations: depending on the number of categories—not yet determined—farmers could be required to follow simple guidelines on charts regarding manure application rates, or they could be required to have an environmental farm plan in place. There will be a phase-in period to obtain a nutrient management plan. Who will be the liaison between farmers, OMAFRA and MOE? A certification process involving education, approval and training will take place throughout the province. Then a third independent party will be contracted to carry out the necessary program requirements. However, until the regulations are identified, it is hard to say what the costs will be or how they will impact on farmers.

What is considered a normal farm practice will be modified to incorporate the standards of the Nutrient Management Act. Testing every field and perhaps several of the neighbour's fields, because a farmer is also spreading there, could become an onerous task for producers. It will demand more of their time, energy and money. Should farmers enter into agreements with their neighbours? How much record-keeping will be required? Financial incentives are not being offered in the draft documentation of Bill 81. Financial assistance and incentives must be available to farmers who may have to upgrade existing facilities to meet standards.

Legislation, regulations and standards: once the bill is proclaimed, the province will have the authority to make standards for managing materials containing nutrients. Farmers must be permitted to participate in a significant manner in the development of regulations and standards and strongly suggest a consultation process whereby farmers form part of the local nutrient management advisory committee, as suggested in Bill 81.

Intensive review by farmers and farm groups: stakeholders need to have input, primarily to iron out difficulties and concerns before they become major problems. Empowering these local advisory committees to do site visits and make recommendations can effectively deal with complaints.

Periodic inspection to ensure compliance is accepted as a necessity. Legislation should establish a process clearly stating that random inspections are meant to be helpful, pointing out what aspects of a producer's operation are in compliance with the standards and what aspects are not. We believe the intent at this stage should not be punitive. We recommend that the issuing of an order be reserved for individuals refusing to correct a situation in a reasonable length of time, as determined by a follow-up visit. A monetary penalty under these circumstances is appropriate and is fully supported by the Russell County Federation of Agriculture.

We must emphasize the importance of biosecurity. We recognize the inspections will require a presence on the

farm; however, biosecurity protocols must be established in consultation with farm organizations to ensure biosecurity requirements are met. These protocols must be entrenched in the legislation and not dealt with as a regulation.

Amendment to Farming and Food Production Protection Act: the amendment should indicate that a judge "shall" refer the determination of a normal farm practice to the Normal Farm Practices Protection Board since decisions of this board have always been site-specific and recognize that normal farm practice varies across Ontario.

Privacy issues: the establishment of a registry in which nutrient management plans are recorded, and the provision of subsequent access to farm records by the public, is a concern to farmers. Vigilante groups could conceivably blow available information out of proportion and take it upon themselves to monitor on-farm practices and watch for violations of any degree. What type of information will be made available to the public in this database must be determined in consultations with farm organizations.

Comments with respect to various sections of the act: application of nutrients in regard to the time—season—of application must take into consideration soil conditions, time of application etc. If the producer's ability to spread nutrients on the land is too restrictive, a problem is created for the storage of those nutrients. Winter application is not acceptable to the RCFA.

The requirement for geophysical studies to determine the types of soils on lands and the direction of groundwater flow in relation to the use of materials containing nutrients is acceptable with respect to new operations, but is there sound justification for such studies with respect to older or improving operations? These studies are very expensive for any farm operation.

Minimum distance separation requirements for the spreading of nutrients on lands must be reasonable between neighbouring houses, watercourses and wells because it could potentially affect the amount of land that a farmer can use: slope, type of soil etc.

The requirement that a nutrient management plan, strategy or any other record or document must be prepared, kept or filed under this act should not be restricted to an electronic format. There are mature farmers running old operations who do not have access to, do not require access to or do not want access to computers. For many, "floppy disks," "CDs" and even "word processing" are foreign words. The RCFA would request that some flexibility with respect to this requirement be taken into consideration.

Regulating the access of farm animals and persons to lands where prescribed nutrients have been applied: regulations would have to be more specific, stating when and why access will be regulated. The RCFA understands regulating access of farm animals but does not understand the reference to persons. Clarification is required. Is it notification for health reasons?



Restricting the access of farm animals to water and watercourses: some thought should be given to the possible expense involved. In some cases it is very difficult and expensive to maintain a fence in a floodplain area.

**Conclusions:** the RCFA recommends that the primary requirement of the legislation be that every farmer, industry and stakeholder develop and maintain a nutrient management plan tailored to his or her farm operation or business, to protect the province's surface water and groundwater resources.

The RCFA strongly recommends and advocates provincial legislation on nutrient management on the basis that it provides consistency across the province. To ensure consistent interpretation of the regulations, it is important that inspection/enforcement be done by a provincial agency rather than delegate several responsibilities to agencies or persons outside of government. This could lead to the interpretation that standards are seen as provincial but will in fact be administered unevenly across the province.

The RCFA believes and recommends that all of society share in the cost of administration. Reasonable projections of the cost to administer Bill 81 should be developed and transition funding should be made available to existing operations that are not now in compliance to make the necessary changes. Studies should be conducted to determine the environmental and economic impact that legislation has on the agricultural industry.

1100

The RCFA recognizes and accepts the need for periodic inspections. However, it recommends that monetary penalties be reserved for individuals who refuse to correct a situation within a reasonable length of time, as determined by a follow-up visit. Monetary penalties under these circumstances are considered appropriate and are fully supported by the RCFA.

The RCFA believes it is essential that the inspection-enforcement group recognizes strict protocols with regard to biosecurity requirements. The RCFA recommends that protocols must be established in consultation with farm organizations and must be entrenched within the legislation.

The RCFA recommends that the Nutrient Management Act must not be used to address situations that fall under the Environmental Protection Act. The Environmental Protection Act is a powerful piece of existing legislation and well suited to dealing with environmental incidents resulting in pollution.

The RCFA supports the establishment of local nutrient management advisory committees that are empowered to do site visits and make recommendations. The RCFA strongly recommends that Bill 81 commits the government of Ontario to establish and use such committees by indicating that the Lieutenant Governor in Council "shall" rather than "may" provide for their establishment. It is further recommended that these committees be composed of individuals having a registered farm business.

Some of the issues that the Russell County Federation of Agriculture has outlined in this paper will surely be repeated in other representations before you today and will more than likely be brought forward in future consultations when the formulation of the regulations takes place.

I wish to thank you for providing us with the opportunity to provide input into the Nutrient Management Act, 2001.

**The Chair:** That pretty well uses up our time, unless a committee member has a brief comment they feel they need to make.

**Mr Peters:** On point 7, the local advisory committees or community environmental response teams—the terminology hasn't been determined—how do you feel about a non-farm rural resident being a member of this advisory committee?

**Mr Pommerville:** One member or the majority?

**Mr Peters:** A representative. I'm not saying the majority, I'm saying a representative.

**Mr Pommerville:** I think society is entitled to have at least one representative on such an advisory committee but the majority should probably be farmers who are knowledgeable in each situation. Agriculture is changing so rapidly. It's not what it used to be 20 years ago and probably 10 years from now it will not be the same again. If you are not involved in farming per se, you might not be able to give the proper advice on what is required. We have to have an act that is proactive, that will also change as the times change, if we want to do the proper job.

**The Chair:** Thank you, Mr Pommerville. We appreciate this brief from the federation.

#### KLEMENS WEBER

**The Chair:** I wish to call forward our next delegation, Klemens Weber. Good morning, sir. As I indicated, individuals have 10 minutes before the committee.

**Mr Klemens Weber:** My name is Klemens Weber. I have been a farmer for 40 years. I'm glad I'm retired. I appear in front of you today on behalf of no one but your grandchildren and mine.

The Nutrient Management Act, 2001: I am encouraged that this government is taking action to improve the rural environment. This action is long overdue. I am concerned, however, that the legislation as drafted does not further the goal of improving the rural environment.

I feel that the draft has two major faults. First, it does not spell out its real purpose. It is like planning a journey without having a destination. What is in fact the desired goal and what is this government's commitment to achieving it? Second, it fails to name and put in place the proper ministry and jurisdiction to be solely responsible for implementing, controlling and enforcing environmentally sensitive legislation in rural areas.

In the proposal, part II, subsection 5(2)(w) refers to the obligatory registration of nutrient management plans by farmers. Using the nutrient management plan as a cornerstone of this act is irresponsible and ineffective. It



will not have the desired results in cleaning up and protecting all our water sources. A nutrient management plan cannot be controlled or enforced in practice. It may well give farmers, some politicians and even some members of this committee a wrong sense of security.

To illustrate my point, I will share some observations. I noted articles published in June last year by our local papers, the Winchester Press and the Chesterville Record. In one, a local farm leader described his liquid manure system in detail. He expressed pride in adhering to his nutrient management plan, which leads him to apply liquid manure at a rate of 4,000 gallons per acre in June and 8,000 gallons per acre at the end of October. Is this plan friendly to the environment? I don't think so.

Shortly afterwards, a well-known OFA spokesperson, in a letter to the editor, explained his belief that manure stored for two months no longer contains any pathogens and is therefore as safe as your backyard compost.

The most striking example of the attitudes of some rural leaders toward the environment was expressed in a letter to me from the chair of the South Nation clean water committee dated May 10 of this year. In it he stated that if landowners, besides education, "receive financial incentives and are compensated for costs incurred, they are more likely to adopt long-term best management practices." I ask you, is his attitude acceptable? One should not get paid for not polluting but should be fined if one does.

Ontario is the third-worst polluter in North America. Our rural community is part of it. Too many overlapping jurisdictions, lack of directives, lack of funds and years of neglect have all contributed to our poor record. This, in spite of all of us knowing better. Just look at all the publications, organizations and studies that are out there and the money spent on them. Who is paying attention? Who is taking action? Who is in charge?

The Minister of Agriculture has failed us miserably. Now he's hiding in a bunker in Guelph. The environment minister is invisible.

Part VII of the act, sections 55 and 56, must be revisited. The minister cannot be allowed to delegate powers and then abdicate all responsibilities for persons or organizations to whom he has delegated those powers. Therefore, the Minister of the Environment must have undivided and sole jurisdiction and all necessary powers over the environment. The minister must establish rules and regulations independently and take full responsibility for implementation, control and enforcement. No other ministry should be able to interfere or overturn decisions.

This proposed legislation must apply to all rural land: farms, woodlots, as well as golf courses and parks. There should be no exceptions or phase-in periods granted for farm operations of different sizes.

To be effective, rules and regulations must be clear, simple and enforceable. Please consider the inclusion of the following:

Establishment of buffer strips on all river banks and watercourses to reduce erosion and agricultural runoffs, to be completed in not more than three years. The local

conservation authorities are the best equipped to help in this task.

Prohibit the use of pesticides in the buffer zones.

Keep all livestock out of waterways.

Prohibit fall plowing on land prone to spring flooding.

Regulate the timing, and if found necessary, the rate of manure applications; absolutely no spreading on frozen or snow-covered ground; no spreading of liquid manure at the end of the growing season between September and April.

Liquid manure systems, as used today, should be discouraged in the future and ultimately replaced. Processing manure is a safer alternative.

In closing, I am sure that rules like those are easily understood and enforceable. They would contribute in a real way to the improvement of our water quality and rural environment. I thank the Chair and the committee members for listening patiently to me.

1110

**The Chair:** We have just under a minute for each party. Any comments or questions from the Liberal Party?

**Mr Conway:** Thank you very much, Mr Weber. I just want to go to the back of your presentation. You live in north Stormont, RR1, Berwick. You say here, "Absolutely no spreading on frozen or snow-covered ground." That's an understandable argument, but let's just play that out. What would I have found in north Stormont last winter if I had followed, let's say, some rural homeowner—

**Mr Weber:** I just want to say that I am only a recent resident of north Stormont.

**Mr Conway:** All right, but you live in RR1, Berwick. That's a very good part of the world. You give some interesting advice here. At one level it's very compelling. So I just want to know, what are people doing now and, given this advice—let's say it were accepted—if I were to be around in Berwick next winter, what would people be doing if they—

**Mr Weber:** You're going to see some farms—a lot of them are very environmentally conscious and they don't spread manure in winter.

**Mr Conway:** Let's take somebody who is not a farmer. Let's take some rural resident living at RR1, Berwick, and he or she has a septic tank. What do they do now?

**Mr Weber:** I'm not addressing municipalities or septic systems because I'm not an expert in civil engineering or those things.

**Mr Conway:** But we have thousands of people living in southeastern Ontario who would face that problem. And it is a problem, I don't deny it. I understand the reasons to make changes. I just want to know what people are going to do as a practical matter.

**Mr Weber:** I'm a farmer; I'm not a municipal expert with rules and regulations regarding seepage from the drainage system of a septic tank.

**The Chair:** Mrs Molinari, less than a minute.



**Mrs Molinari:** Thank you very much for your presentation. You talked about some consistencies in application of the legislation in various communities. We've heard from some presenters about how the provincial legislation should supersede any municipal bylaws that are in place. We've heard from some of the municipalities that you really have to take into consideration some of the municipalities' local concerns. How would you respond to that?

**Mr Weber:** It depends on who is expressing those local concerns. If I'm a farmer and I'm tight with my money, I don't want to spend any money on the bloody environment because I have to pay my bills next week, or on November 1 my farm loan is due. I don't give a hook about the environment; I might pay lip service.

You've got to have simple regulations, and don't send the fox to count the chickens in the barn. We have an environment minister. What does "environment" mean? He should be in charge of the environment and be on top of the environmental regulations—independent. You get the municipal affairs minister, you get the mining people; everybody is doing his own thing, representing his own interests or his own view on the environment. And who has suffered in the last 50 years, roughly, especially in Ontario, as a jurisdiction cleaning up the mess? Ontario is lagging behind Europe especially and even Quebec, and some jurisdictions in the States. A generation of farmers is behind in education in a place like that. It should be more environmentally friendly, and I think it isn't.

**The Chair:** Thank you, Mr Weber, for coming before the committee.

#### LEEDS COUNTY FEDERATION OF AGRICULTURE

**The Chair:** I wish to call forward the next delegation, the Leeds County Federation of Agriculture. Good morning, sir. We have 15 minutes. We'll get your name for Hansard.

**Mr Dave McLaughlin:** My name is Dave McLaughlin. I'm the provincial director for the Leeds County Federation of Agriculture. I have regrets from our president who is unable to attend today.

The Leeds County Federation of Agriculture, on behalf of the farmers of Leeds county, appreciates this opportunity to present our comments and concerns regarding Bill 81.

Leeds is a diverse county, rich in agriculture, representing a wide variety of agricultural products, including the more traditional ones and the more exotic, such as llamas and ostrich. Recently, an economic impact study was released for Leeds, Grenville, Frontenac, and Lennox and Addington has shown that agriculture is a major force in the local economy. This study provided us with that proof, with the facts and the figures that everyone seems to enjoy so much: 1,500 farms, with farm gate receipts of \$104.5 million; related sales of \$210.3 million; and, 16% of the population in our area is

employed either directly or indirectly in agriculture. It is clearly a major force in our local economy.

Farmers, as stewards of the land, are very concerned about the environment and conservation of the land and water. Through the development of the Ontario Farm Environmental Coalition, the environmental farm plan program was launched in 1992 which addresses a number of nutrient management issues which farmers can identify with, seek solutions to and address potential problems on their farms. In Leeds, 43% of farm businesses have attended an environmental farm plan workshop.

Unfortunately, the Walkerton situation has created a heightened awareness over water quality and nutrient management by the agriculture sector. A cloud of suspicion by the public views farmers as potential contaminators of our water resources. I'd add that's the unfortunate part; it's not unfortunate that we're looking at these issues. At this time, while there is no conclusive evidence substantiating the fear based on the information given at the first step of the Walkerton inquiry, we must be vigilant and ensure that our farmers have the ability to farm after Bill 81 is in place. Some of our concerns include:

A major issue that's repeatedly expressed by our membership is the concern of the costs for upgrading existing farms to meet eventual minimum standards and regulations once Bill 81 is in place. I realize that this is enabling legislation, and when our ministry toured the country earlier and we were able to ask questions at information sessions, when asked about funding and why funding was not mentioned in any of the enabling legislation, the reason given was that would come later when developed. Yet almost half of Bill 81 as presented now deals with fees, cost recovery, penalties and punitive action.

Although the farming community strongly endorses the nutrient management plan process, a number of farmers will be unable to afford expensive upgrades. Many farmers are already in a precarious financial situation and if required to make several expensive upgrades their only option may be to quit farming. This alone will have many implications. Smaller farms will shut down their operations, leading to fewer and larger farms thereby increasing the intensive livestock operations. The economic impact to local businesses will be affected as there will be fewer farm businesses: related business, veterinarians, agribusiness, farm supply, truck and equipment dealers, financial, legal—it goes on and on.

Another factor to take into consideration is that the average age of an Ontario farmer is now 55. Some of these farmers, if faced with costly upgrades, may just simply quit farming.

LFA strongly endorses that financial assistance should be made available to farmers in the form of project grants. The grants must be accessible and applicable to the farming community requiring upgrades to meet minimum standards that will developed for Bill 81.



OMAFRA has done us a very large favour in that they've put a good Web site together. Their page links to other jurisdictions' nutrient management plans and conservation efforts in effect elsewhere. Almost all of North America is available on their Web site. All of the jurisdictions bordering Ontario—New York, Pennsylvania, Vermont, Quebec—make provision for grants, and realize that in order to keep strong small family farms and mixed farming viable in their areas some assistance has to be provided.

A suggestion to consider in order to fund these projects with NMP would be to establish a food or a green tax. These dollars should be used exclusively for the NMP process for farm upgrades to meet minimum standards. While the intention of Bill 81 is to protect our water resources, it is also a public health safety issue and the upcoming legislation would benefit all the public, therefore the public has a responsibility in this process. Agriculture should not be forced to bear the brunt of the costs associated with this alone.

Another major concern expressed is over the provision that inspectors could enter any part of your property, except your personal residence, without warrants. Inspectors can also examine all records, including your environmental farm plan. The original intention of the environmental farm plans was that they would be kept confidential. The concern is that provisions you might have identified in your farm plan, corrective action you may need to take but may for financial reasons have put off for a one- or two- or three-year period, will then be available for their viewing and could possibly be used against the farmer.

1120

LFA would like to request that investigators receive permission from the landowner/operator/tenant prior to entering the property. These investigators must be thoroughly trained specifically to regulations pertaining to Bill 81 and must respect farmers' right of confidentiality of environmental farm plans.

This inspector must also adhere to on-farm biosecurity measures. The inspections and the inspectors should come under provincial agencies so there's consistency with rules and regulations throughout the province and everyone follows the guidelines. In that area, we recommend there be no farming out of services by government agencies.

While the general consensus for the most part is that this legislation is positive and seen as a proactive step with the farm community to address environmental concerns, there is a concern that once this legislation is passed there will be a number of groups and/or individuals who could challenge farmers and interpret the legislation to suit their own purposes. To deal with this potential problem, it is suggested that a local peer review committee or dispute resolution committee be established. In many cases, the committee could be the first point of contact for complaints and/or violations of the regulations and these complaints could then be forwarded to the ministry handling inspections. In effect, OFA has

suggested that OMAFRA and the Ministry of the Environment should work together on this program and that they could be consulted to provide the initial response.

It's felt that in most cases a committee of peers would resolve the situation without need for an enforcement agency to become involved. The makeup of the committee should be broad-based, but at least 50% should be farm business registrants. The Ontario Farm Environmental Coalition has developed basic sets of guidelines for the formation of advisory committees, and these guidelines could be the basis for the formation of local NMP committees.

Also, to possibly reduce the number of unfounded complaints and unnecessary costly investigations, complainants should be required to sign a witnessed document in order to initiate an investigation. The complainant should also be required to pay legal or court costs if the complaint is unfounded or unjustified in any way.

We feel very strongly that farmers and other stakeholders must be allowed to participate in a relevant and meaningful way in the entire process of developing the regulations and standards, and evaluating the adjustments once the program is set into place.

The bill doesn't indicate any ministry having a lead role. We would like to request the Ontario Ministry of Agriculture, Food and Rural Affairs be this lead agency. With OMAFRA's expertise in soil science, crop production, manure storage and application, they are best suited to deal with Bill 81. In addition, the farming community and OMAFRA already have a comfortable working relationship.

It's essential farmers be informed of the standards and regulations once the legislation is approved. It is also important that farmers receive the appropriate training needed to understand and upgrade their knowledge base to become prepared and initiate their NMP planning and record-keeping. It is suggested that the Ontario Agricultural Training Institute, known as OATI, be contacted to provide the necessary training. OATI's mandate is to provide training and to help farmers manage change—this certainly will be a change—and would be the logical choice to assist farmers with new changes. OATI also has community training advisers already established throughout the province.

The Leeds federation would like to recommend a baseline study needs to be implemented to determine environmental and economic impacts this legislation will have on the agricultural industry. It's obvious this is meant to improve water quality, but how will we know if we've improved it if we don't know where we started from? We need to know where we stand today in terms of existing legislation, inventory of water resources, water quality on a provincial level, and provincial land-based animal density in addition to soil mapping. The provincial baseline study should be completed and analyzed prior to implementation of the regulations.



Also, nutrient management legislation should not duplicate or replicate current legislation. For example, if we're just looking to solve a problem situation, we already have legislation through the Environmental Protection Act, Ontario Water Resources Act, Pesticides Act, Farming and Food Production Protection Act, Highway Traffic Act, the Department of Fisheries and Oceans, building codes etc, to deal with problems. This legislation is looking at being a control instrument. It is the intent to make water quality a top priority but not to have a number of different agencies dealing with the same issue.

Our federation supports the intention of Bill 81 to supersede municipal bylaws which have put in place their own NMP regulations. OFA's strong support of this and many other people's strong support of this was that it would provide a provincial set of standards. Unfortunately, that may not be the case. Recent cases include the pesticide control bylaw in Hudson, Quebec, and the non-smoking bylaw in Ottawa. Parties against those used the public health and safety issue as a guideline, and due diligence awarded that the municipality could indeed set forward bylaws that were stronger than provincial legislation.

Once again, I'd like to thank you very much on behalf of the farmers of Leeds county for this opportunity.

**The Chair:** Thank you, Mr McLaughlin. We've got about a minute for each party. We'll begin in rotation and start with the NDP.

**Mr Bisson:** You touch on an issue that everybody's gotten into, which is the costs associate with implementing such practices on farms. You suggested putting on a green tax and I, for the life of me, don't think the public out there is prepared to get any kind of new taxes when it comes to an added burden on to the taxpayer. The idea of a phase-in has been brought up by other people. Would that be a more appropriate way of going, that you phase it in over a period of time so that if there's new equipment that needs to be purchased it's on a phase-in period, that when people need to replace their equipment they go to the new standard? If there are certain guidelines to be met, there'd be a phase-in period of three, four or five years. Would that be more acceptable? I just don't think the green tax thing is going happen.

**Mr McLaughlin:** Quite often, when we're asked to comment on these things we're seen as saying everything that is wrong and offering no solutions. We felt this was the way of offering a solution, that indeed all consumers are to benefit.

We're constantly developing policy, in this case agricultural policy or environmental policy. We're developing a policy to work within what we can afford. The dollars are put up on the table first and then they say, "You design the policy that we can deliver with this amount of money." It's obvious that the best policy needs to be developed without looking at that cost: develop that policy and then go and try to fund that policy, if you believe that to be the best one.

I'm not sure, from indications that I have seen in various studies in ecological and environmental magazines, that a large part of the public would not be prepared to put a 1% food tax on to pay for a better environment.

**Mr Carl DeFaria (Mississauga East):** On point 6 of your presentation, you indicated that your federation felt that OMAFRA should be the lead agency.

**Mr McLaughlin:** Yes.

**Mr DeFaria:** That is a point that has been made by other presenters. How would you feel about an enforcement unit that would be under OMAFRA but would have inspectors from the Ministry of the Environment?

**Mr McLaughlin:** Actually, I have a copy of the presentation that the Ontario Federation of Agriculture made, and I'll just read from that because it also addresses Ms Molinari's concern earlier this morning for the conflict of interest. That is: "that the Ministry of Agriculture, Food and Rural Affairs be named as the lead ministry and that the enforcement expertise of the Ministry of the Environment be obtained through the establishment of a special unit within OMAFRA that includes individuals seconded from the MOE."

By assembling expertise in soil science, crop production, manure storage application and training, and combining those ministries with that enforcement agency, I think that would take care of the concern over the conflict of interest.

**The Chair:** I'll go the Liberal Party.

**Mr Cleary:** Thank you for your presentation. I know the two questions I had have partially been answered, about the food tax or the green tax. You had said a 1% food tax?

**Mr McLaughlin:** That would really require a lot of study on what would be feasible, even what would be required. We don't know the cost yet of this program.

**Mr Cleary:** You had said about the inspectors going on the property at any time. So you agree these would be for provincial Ministry of the Environment inspectors?

**Mr McLaughlin:** Yes.

**Mr Cleary:** And that the Ministry of Agriculture would be a partner in it?

**Mr McLaughlin:** Yes.

**The Chair:** Mr McLaughlin, we appreciate the Leeds Federation coming forward.

#### ONTARIO SHEEP MARKETING AGENCY

**The Chair:** Our next delegation is the Ontario Sheep Marketing Agency. Good morning, sir. We've got 15 minutes. We'll get your name for Hansard and we can proceed.

**Mr Chris Kennedy:** Good morning. My name is Chris Kennedy. I am here to represent the Ontario Sheep Marketing Agency, which is the body authorized by the Farm Products Marketing Commission to represent the sheep farmers in Ontario.



I am one of the 11 provincial directors on the board and seem to have acquired the portfolio to deal with nutrient management. I'm a full-time sheep farmer. I have been for 15 years. I've spent the last year also working with our local township on drawing up a nutrient management and intensive farming bylaw, so I'm fairly familiar with most of the issues that have come up.

I hope you've all received copies of the sheep marketing agency presentation. I'm not going to read through it. I just wanted to highlight three or four issues that are particularly important to the sheep industry, and maybe at a later time you can go through the full detailed study of the bill.

1130

The first point I'd like to make is that it's very important to the sheep industry that this be a provincial bylaw with province-wide standards. There are a number of reasons for this. Partly, we don't want to see conflict arising between different municipalities as to, for example, which ones require a roof over them near a storage shed and which ones don't. If my next door neighbour in the next municipality has to have a shed, I don't. I can see a lot of potential for conflict, and indeed lawsuits, if that comes up.

Another important point from that is that if, for example, a roof is required over a manure storage shed, that requirement should be based on science and engineering studies. If it's opened, is it going to leak so that we require a roof? It shouldn't be based on the opinion of local politicians and their conceptions and misconceptions of farming; it should be a scientific study. Do we need a roof or not? If we need a roof, then the whole province needs a roof. One municipality doesn't and one municipality would.

Another thing of concern to the sheep industry that always comes up is the table of livestock units. It dates from the 1970s and it equates four sheep to one dairy cow. It's a constant bone of contention at every meeting I've been to. In terms of manure production, four sheep do not, in our opinion, equal one dairy cow. I believe OMAFRA has conducted scientific studies to investigate this and indeed found that probably six or seven is certainly a much more accurate figure. I think this is a good opportunity to completely revise these tables, bring them up to date and base them on some science, rather than on figures from the 1970s.

Another thing I find at sheep meetings is people want to know if the regulations are going to be tailored for sheep. Most of the bill and a lot of the regulations we see cover all species of livestock. In many respects, I hope you realize that sheep are not actually just pigs with wool on or miniature beef cattle. Sheep are a different species with different habits, and we would like to see in the regulations that they are treated correctly from a biological point of view.

One example that always comes up is wintering sheep. Sheep come provided with their own wool coats. They do not need to be in barns. Indeed, the quickest way to make a sheep sick is to stick it in a barn with a whole lot of

other sheep. So it's important for the sheep industry to have regulations so that we are allowed to winter our sheep outside, which nine out of 10 sheep farmers do, sometimes in yards. A lot of sheep farmers, particularly bigger ones, winter their sheep outside on pasture and they are the healthiest sheep in the province. We want to be able to maintain that. We can get away with it partly because of the different nature of sheep manure. Sheep manure is much closer to, say, deer manure than cow manure. It's dry pellets; it doesn't dissolve at the first sign of rain. So we can safely leave sheep out grazing during the winter.

Another thing that comes up is the fencing of waterways. This is always a big one because sheep avoid water if they can. They originate in the Middle East, which is dry country. They never stand in water. They will avoid crossing water if they can. If they come down to drink water, they'll come down and drink without getting their feet wet, if they can, and leave. To require every piece of water to be fenced for sheep is an enormous expense and, frankly, I don't think it will do an awful lot—

**Mr Bisson:** And it's silly.

**Mr Kennedy:** Yes. It's just not necessary, that we can see.

A lot of sheep farmers, too, particularly in the north and east, do not plow land at all; they don't work land at all. So if the regulations and so on require incorporation, we're going to be really in a bind because we spread the manure on pasture and hay fields. We would like regulations designed so we can do that safely.

The other subject that comes up, of course, is cost. Sheep farmers trade on the world market. We do not have quotas, we do not have tariffs. We have to compete against all the neighbouring jurisdictions, and New Zealand, when we sell our product. As the previous speaker said, all the neighbouring jurisdictions—the United States, Quebec and so on—are getting considerable financial help. If we don't get it, we are not competing on a level playing field. We have to compete against American lamb and Quebec lamb and so on. In the last 10 years, the sheep industry has increased its share of Ontario lamb from about 30% to about 50%. So it's a growing industry, but we want to be able to continue to grow without having to suffer too many financial penalties.

The other thing that has been brought up to me is the sometimes heavy-handed nature of this legislation, reading through it, particularly the right of entry without a warrant. I can see why we need the right of entry without a warrant if there is danger to the environment, people or livestock. That, I can see, constitutes an emergency. But for provincial officers to be able to enter without a warrant merely to obtain evidence, I believe, is greater power than the police have. I believe if they enter a house, they have to get a warrant. I would like provincial officers to have the same restrictions.

Coming back to the legislation, I really hope you can move ahead with it. A lot of people in the sheep industry



want to do stuff. We want to know what the regulations are and what the restrictions are before we go putting money into improvements to our farms. So I hope you'll move ahead, draw up regulations, talk to the sheep industry, talk to all the industries as to what really make sense and what will really do the job to manage nutrients properly without placing undo restrictions, and then we can all move ahead.

**The Vice-Chair (Mr Carl DeFaria):** We have approximately two minutes for questions from each caucus.

**Mrs Munro:** Thank you very much for coming here today to talk specifically about the sheep industry. As you went through the number of areas where there are, in your view, distinctions to be made because of the specific nature of the sheep industry, I wondered if you could comment on the kind of environmental plans that sheep producers have put forward in the last few years which speak directly to the ways in which the sheep industry has responded to the environmental farm plan projects.

**Mr Kennedy:** Specific projects by the sheep industry? I'd have to think about that one.

**Mrs Munro:** I guess the reason I ask the question is simply because of the fact that you raised issues about the question of animal units and it not being appropriate to recognize the difference between confined animals and those, obviously, that are pastured.

**Mr Kennedy:** One thing is, we have been co-operating with OMAFRA staff on the sampling of manure. They've come around and taken samples on a lot of farms. They have also been measuring manure piles. They've been around eastern and southern Ontario measuring manure piles. I haven't seen the results of that study yet but I have seen the results from studying manure. OMAFRA's suggestion is that the table of livestock units be based on the amount of phosphorous produced by different livestock, because phosphorous is the most serious nutrient for sheep. The preliminary figures I saw indicated about seven sheep to one dairy cow.

**Mr Conway:** Thank you very much, Mr Kennedy, for a very interesting brief. I just have one basic question here. I'm a visitor to this committee, but it seems to me that most people quite understandably make the argument for consistency. That I think is understandable, and you did an excellent job of doing your share. Then, having said all that needs to be said about consistency, very thoughtful people like yourself, it seems to me, sing a hymn of praise to variability, which also makes sense. I don't know anything about the sheep business but I learned a lot from your presentation. I guess one of the questions I have is, how do we do this? I live in Renfrew county; we have a lot of producers on rugged hardscrabble that happens to be close to very sensitive waterways. I imagine my friends here from the Russell County Federation of Agriculture being over in the shadow of a never-ending expanding Ottawa. We've got cattle; we've got sheep. Somebody gave me a copy the other day of the Ontario Farmer Daily from August 25,

2001, where I'm told that 20% of farms account for two thirds of the manure produced in the province. There's a very heavy concentration of that in southwestern Ontario. Can you just help me with this balance between consistency and the need for flexibility and variability? It seems to me that too much consistency here is going to get someone into a lot of trouble.

1140

**Mr Kennedy:** One possibility that occurred to me was that we could have regional variations—that may be northern and eastern Ontario—away from urban concentrations. We could have more relaxed standards, say, than in the 905 area. That might be one way of approaching it, rather than having it on a municipal basis.

**Mr Conway:** But you're making a very clear statement that fencing issues, for example, should be different around watercourses for sheep producers than they should be for beef operations.

**Mr Kennedy:** Yes, because sheep react completely differently to a watercourse from the way I've heard cattle do.

**Mr Bisson:** You're not the first one to raise it; a number of people have raised the issue of the ministry having the ability to send in their inspectors without warrants in order to inspect, to make sure people are consistent with this act if it passes. I share a concern with you and others about what that means when we put that in legislation.

I'm wondering, and I'm not sure if the question is for you or legislative research maybe to respond to, what the current practice is. If the ministry goes on to a farm to inspect for acts that are presently in place, do they have to have a warrant, or do they have that right already written out in legislation? I'm wondering if this is a new concept or just the expansion of an existing concept that already exists when it comes to the purposes of an inspection.

**Mr Kennedy:** I'm in the mining business, so I don't know: when inspectors go on a farm, do they normally have to show a warrant when they go to inspect if you're consistent with other acts, or what?

**Mr Kennedy:** I don't know. I'm afraid I've never had one on my farm.

**Mr Bisson:** That's probably a good thing.

**Mr Kennedy:** Yes.

**Mr Bisson:** I think the sheep wouldn't like it.

Can we get legislative research to provide us with an answer to that, maybe to the clerk? Is it a new concept? That's all I want to know. If it is, it troubles me.

#### BRAZEAU BOURGET SANITATION

**The Vice-Chair:** We have 'one more presenter this morning: Brazeau Bourget Sanitation, Nicole Brazeau. If you could just state your name for Hansard.

**Ms Nicole Brazeau:** I was told I could do the presentation in French.

**M. Bisson :** Mais oui, madame.



**M<sup>me</sup> Brazeau:** So feel free to ask me questions in English if you can't ask me in French, OK?

I represent Brazeau Bourget Sanitation. Mon nom est Nicole Brazeau. Mon mari, Robert, et moi sommes propriétaires d'une entreprise incorporée du nom de Brazeau Bourget Sanitation. Cette entreprise est familiale et nous travaillons avec nos deux fils, François et Charles. Nous sommes situés près du village de Bourget dans les comtés unis de Prescott-Russell. Nous sommes en commerce depuis 30 ans.

Que faisons-nous ? Depuis 1986 nous faisons le transport des déchets qui proviennent des fosses septiques résidentielles. Nous offrons nos services à une clientèle estimée à environ 20 000 clients. Ça ne veut pas dire que nous avons 20 000 clients, mais nous offrons nos services à une clientèle de 20 000 clients. Nous faisons aussi la location de toilettes portatives.

Depuis 1997 nous avons un site d'épandage pour les déchets provenant des fosses septiques. Ce site est situé à Riceville, au centre des comtés unis de Prescott-Russell.

J'aimerais parler de notre site situé sur le lot 18, concession 14, dans la municipalité de la Nation.

En 1997, nous avons acheté un terrain à Riceville dans la municipalité de la Nation. Ce terrain est pour nous l'endroit idéal, et pas seulement pour nous ; j'ajouterais aussi pour le ministère de l'Environnement. C'est ce qu'ils nous ont dit. Il est situé dans un endroit isolé et boisé où il n'y a pas d'électricité. Nous avons fait la demande auprès du ministère de l'Environnement pour que ce terrain soit approuvé comme site pour épandre les déchets provenant des fosses septiques. Nous avons suivi le « guideline for site assessment for septage disposal ». Nous avons aussi embauché un consultant, même si cela était optionnel.

Quand le travail fut terminé, nous avons reçu notre certificat d'approbation. C'était en septembre 1997. Le premier jour, lorsque nous nous sommes présentés sur le site avec de l'équipement d'épandage, nous avons eu une vive objection de la part de trois non-résidents qui possèdent du terrain à plus d'un demi-kilomètre de notre site. Ces gens se sont plaints aux représentants municipal et provincial. Il était clair qu'ils ne voulaient pas de notre site d'épandage dans leur région. Aussi, ce même premier jour, le ministère de l'Environnement nous a demandé de ne pas commencer à épandre et il nous a demandé des exigences nouvelles : un programme de monitoring, incluant la gestion des plaintes. Nous avons donc présenté un programme de contrôle de la qualité des eaux de surface et des eaux de profondeur. Nous avons installé des puits d'eau afin de prélever des échantillons d'eau de manière régulière. Nous avons aussi établi un programme de gestion des plaintes.

Ce programme de monitoring a été approuvé et nous avons reçu du ministère de l'Environnement, en octobre 1997, un « amended certificate of approval ». Le ministère nous a alors dit que nous étions un des rares sites dans la province qui est approuvé avec un programme de monitoring et en fait le seul de ce genre dans les comtés de l'est de la province.

En 1998, nous avons rencontré un groupe d'étude du Collège d'Alfred—je crois aussi qu'il y avait des gens de l'Université de Guelph—afin de considérer la construction d'un wetland sur notre site. Nous avons décidé de ne pas choisir cette option pour traiter les eaux usées puisque ce traitement n'a pas encore fait ses preuves. Les résultats sont encore inconnus.

Le 22 juin 1999, notre site a été reconnu sur le nouveau plan directeur des comtés unis de Prescott-Russell comme étant un site de gestion des eaux usées.

Cette année, le ministère de l'Environnement nous exige du travail en surplus. Nous devons installer d'autres puits pour vérifier les eaux de profondeur et nous devons analyser de nouveaux paramètres. Aussi, la fréquence des échantillonnages va peut-être augmenter considérablement. Le ministère nous exige également d'avoir un consultant en permanence.

Nous avons aussi comme plan de bâtir une lagune. Cela nous permettra d'entreposer les eaux usées et de les épandre dans des conditions idéales. Une lagune est aussi un pré-traitement pour les eaux usées. C'est sûr que ça doit être fait avec l'autorisation du ministère de l'Environnement.

#### 1150

La Loi de 2001 sur la gestion des éléments nutritifs, comment peut-elle nous affecter ? Nous avons lu le document Nutrient Management Act explanatory notes. Nous savons que cette Loi fera en sorte que nous devons suivre des standards qui seront établis et que ceux-ci répondront à des règles de la Loi.

Les règles ne sont pas claires, ni les standards, à ce point-ci, pour moi en tout cas, quand j'ai lu la Nutrient Management Act. Nous croyons que la Loi va nous interdire d'épandre sur notre site les déchets provenant des résidus de fosses septiques. Donc, en d'autres mots, cela veut dire que notre site sera fermé.

Jusqu'à maintenant nous avons dépassé les exigences de base selon les requêtes initiales demandées par le ministère de l'Environnement afin d'obtenir et de maintenir notre certificat d'approbation.

Ce que nous demandons, c'est A et B, deux options :

A. Que notre site certainement ne soit pas fermé, car nous croyons avoir un site spécial, géré différemment avec un programme de gestion ;

B. Dans le cas contraire, où nous n'aurions pas le choix de cesser nos activités et où une fermeture du site devient éminente, nous aimerions que le ministère ou les ministères nous accordent une compensation financière pour les raisons suivantes : les raisons que j'ai expliquées plus haut, parce que l'on nous a exigé des critères de performance plus élevés ; et deuxièmement, parce que sans compensation financière, nous nous retrouvons devant un échec financier ou, en d'autres mots, c'est la faillite. Je m'explique : les dépenses encourues sont de plus de 200 000 \$ et elles comprennent achat de terrain, défrichage, embauche d'un consultant, achat d'équipements. Pour nous, cela est un investissement majeur.

Dans le cas où notre site serait fermé, nous ne serions pas en mesure de payer les frais pour disposer des eaux



usées à la ville d'Ottawa et en plus de payer les dettes encourues pour obtenir notre certificat d'approbation. Il est certain que nous allons devoir augmenter les frais aux usagers et qu'ainsi nous ne serions plus du tout compétitifs.

Pour nous ce projet est encore jeune ; il n'a même pas quatre ans. Nous n'aurions certainement pas dépensé tant d'argent, d'efforts et d'énergies si nous avions pensé qu'une loi mettrait fin à nos activités sur notre site. Nous aimerions que les ministères reconnaissent nos efforts et notre travail dans l'élaboration de leurs règles et de leurs critères futurs. Merci.

**The Chair:** Merci, madame Brazeau. We have approximately three minutes for each caucus for questions.

**Mr Conway:** I just want to thank you, madame Brazeau, for a presentation that I think speaks to one of the most serious issues I see facing hundreds of thousands of people in rural Ontario. There are at least 25,000 or 30,000 permanent residents of my county who face this issue, to say nothing of all of those people in cottage country, who just recently have begun to understand that this new reality might apply to them. I don't want to take the time of the committee today, but I would hope that my colleagues who are permanent members of this committee and all of us who represent rural and northern Ontario have an opportunity to have some kind of briefing with the Ministry of the Environment and the Ministry of Agriculture and the Ministry of Municipal Affairs, because this is a ticking time bomb that most people don't understand and for which there are no easy solutions. I wish I had some.

**Ms Brazeau:** You know, in 1996 we were told by the city of Ottawa that they have the right not to accept us. That's why we decided to go ahead with that project. So today we face the reality that maybe a law will stop us from spreading human manure on the site.

**Mr Conway:** My colleagues might have something to say about this, but this concerns me a great deal and I really appreciate your coming here and focusing on that.

**Mr Peters:** Madame, is there an association of other like-minded companies like yourselves? How many companies like you are there in Ontario?

**Ms Brazeau:** I don't know.

**Mr Peters:** You're the first we have heard from as we've toured around. We've heard from companies that have some ideas as to how to deal with the septage but you're the first affected company. I just wonder how many others there are like you.

**Ms Brazeau:** There is an association, I think it's in Toronto, but we're not members or part of the association. We've received some pamphlets in the past, but I think from what I heard—maybe I'm wrong—that it's not a really strong association that deals with these problems. I think these problems need to be dealt with more locally. Maybe it's different from one area to the other; I'm not sure.

**Mr Cleary:** Madame Brazeau, thank you for your presentation. I know that there are other incidents where there are similar problems to yours. I just wanted to ask

you: you said you'd cleared the land? The land is clear where you spread the sludge or spray?

**Ms Brazeau:** Yes.

**Mr Cleary:** So you don't spray into a swamp or bush?

**Ms Brazeau:** No.

**Mr Cleary:** It's clear land. Then you work the ground after?

**Ms Brazeau:** No, it doesn't need to be worked right after. What we need to do is just spread. We have equipment: we have tractors, we have a spreader; it's a vacuum spreader that we have. So we just spread it on the land, but we have certain criteria to follow. We are not allowed to spread it during the winter, when the earth is frozen; and 60 metres from the ditch, we cannot spread in that area.

**Mr Cleary:** So you quit spreading in November?

**Ms Brazeau:** We are not allowed to spread between December 15 till March 15. Or if it has rained too much, if it's pouring, we are not allowed to spread in these conditions.

**M. Bisson :** Madame Brazeau, merci beaucoup. Votre présentation, comme l'a dit M. Conway—c'est quelque chose qui est frustrant. On dépense des milliers de dollars pour s'assurer qu'on est en vertu de suivre la loi qui est en place pour nous donner notre approbation, puis parce qu'une loi change, ça change tout le jeu.

Je peux seulement dire que notre comité, ce qu'on va faire, parce que c'était demandé, c'est de regarder cette question-là d'un peu plus proche, parce que ce n'est pas seulement vous dans vos entreprises mais des autres qui sont possiblement en danger s'il n'y a pas de changements dans la législation. J'ai votre nom et votre adresse. On va vous laisser savoir ce qui se passe.

Je vous remercie pour votre présentation.

**M<sup>me</sup> Brazeau :** J'aurais peut-être dû aussi ajouter que notre terrain est approuvé pour accepter d'autres gens, pas seulement pour notre usage à nous. Je pense que cela aurait été essentiel que je l'ajoute, et je m'excuse. C'est un point qui vient à mon esprit.

**Mrs Munro:** Thank you very much for coming here today. As was mentioned a moment ago, you represent a very significant part of this whole problem. As far as I'm aware, you are the only person who has brought the specifics of operating for a very significant part of our population in the province as a whole. So I want to offer my thanks for bringing this issue to our attention. Although it is within the guidelines in terms of the discussion, it certainly needs to have the kind of voice you've brought to the table here today. So certainly I want to thank you.

**Ms Brazeau:** Thank you. I would like to invite the committee, whenever you have questions, to me or just put them in writing for me and I will be pleased to answer.

**The Chair:** Thank you for that offer. On behalf of the committee, we appreciate your making this submission. Thank you very much.

This concludes the delegations for this morning. We now take a break. I wish to let people know that the



cafeteria is available two buildings over from here. I think that cafeteria is open to the public. I know the committee has been scheduled to go over there to have something to eat and maybe get a chance to roam around this beautiful campus. We reconvene at 1 p.m.

*The committee recessed from 1159 to 1300.*

**The Chair:** I wish to welcome everyone back to our afternoon session of hearings through the standing committee on justice and social policy, continuing delegations on Bill 81, the Nutrient Management Act.

#### NATIONAL FARMERS UNION, DISTRICT 8

**The Chair:** From this afternoon's agenda, I wish to call forward the National Farmers Union, District 8. Good afternoon, gentlemen. If you wish to proceed, we have 15 minutes. We'll ask for your names first for the purposes of the Hansard recording.

**Mr Barry Robinson:** My name is Barry Robinson.

**Mr Ellard Powers:** My name is Ellard Powers.

**The Chair:** Please proceed.

**Mr Robinson:** Mr Chairman and members of the committee, we're very pleased to have the opportunity to present our concerns and recommendations on Bill 81 on behalf of farmers in Renfrew county. The National Farmers Union is a national general farm organization. We recognize and advocate for the family farm as a principal unit of food production, the primary agent of stewardship for the land and water, and the very foundation of the rural community.

In Ontario the NFU actively promotes family-scale farming that is economically and environmentally sustainable. It's our firm belief that policies which benefit the family farm are also the best policies for the citizens of Ontario as a whole, whether rural or urban. This is the fundamental principle on which we base our involvement in policy, including the current process of developing appropriate standards for agricultural operations.

According to the government's June 13, 2001, press release describing the bill, its purpose is to "protect water and set clear standards for farms." The accompanying background indicates that the bill is in response to the "need for a comprehensive, clear, province-wide approach that protects the water, environment and well-being of communities in rural Ontario, while ensuring farmers can invest in and operate their farms with confidence."

The NFU applauds these goals and the affirmation of the interconnectedness of the environmental, economic and social aspects of the issue. The best way to ensure good management practices is to provide farmers with adequate return for their investment, management and labour. Farmers want to be good stewards of the land and environment. We believe that government must show appropriate support for this important sector of our economy. We particularly appreciate the fact that the government is now recognizing the urgent need to

address, as part of the same issue, the problem of municipal and industrial sludge. However, we seriously question whether the nutrient management bill actually responds to the needs it claims to address.

A major limitation is reflected in the title. The overwhelming focus on nutrient management as the solution to the problem cited simply misses the mark.

The NFU shares the understanding of animal manure as a soil and plant nutrient. Indeed, high-quality manure is practically irreplaceable as a means of maintaining the health of the soil and producing food in a sustainable manner. Among NFU members and others, there are farmers who are doing a marvellous job with this precious resource. At the same time, we recognize that most of the manure does not come up to this standard. Poor quality manure, no matter how it's managed, can be a major threat to water, the environment and human health. We must aim for laws, policies and agricultural practices that maximize the quality of the manure we produce and enable us to make it always a benefit, rather than a threat.

We believe nutrient management plans can be helpful and important when linked to proper standards and adequate procedures for monitoring and enforcement. Even then, nutrient management plans are only one element of what is needed. Without attention to the issue of quality and without other major legislative and policy changes, a focus on NMPs simply cannot provide proper protection for water, much less the environment and rural communities as a whole.

We are pleased to see the government proposing province-wide standards for some aspects of the problems associated with livestock manure, sludge and other such materials. We recommended provincial standards in our two previous briefs on these matters. However, it is difficult to comment on the technical and legal adequacy of this legislation when the standards it is intended to introduce have yet to be established. In fact, there's no assurance that they will be. Section 5 states the government "may make regulations" in any or all of a variety of areas, but it is not required to do so.

We are also uneasy that if and when these measures come into existence, they will not be as an integral part of the legislation, but only as regulations, which are subject to change without significant public involvement. We recommend that the regulations dealing with provincial standards and other matters currently listed under section 5 of the act be developed in full consultation with citizens and with farm, environmental, municipal and public health groups, and that key requirements be subsequently enshrined in the legislation itself.

Under size and concentration, classifying agricultural operations is not a simple matter, but it must be addressed if regulatory measures are to be feasible and fair. The Galt-Barrett report of March 2000 proposed three categories: fewer than 150 livestock units; 150 to 450; and over 450, the last of which they would classify as intensive agricultural operations.



We believe that stocking density is just as important to consider as the total number of livestock units. The type of operation also makes a difference. A cow-calf producer with 200 beef cows on 500 acres would not be running an intensive operation, whereas a dairy operator with 100 cows in confined quarters could be.

The distinction between family farms and intensive livestock operations is critical, both in environmental terms and economic and social as well. For example, the cow-calf sector, an important part of Ontario's agriculture, is made up almost entirely of smaller family-run operations, often numbering 20 to 30 cows. We must recognize that many of these producers depend on rough pasture, bush and gullies as an important part of their operation. These places can be extremely difficult and expensive to divide. If the law were to require that these farmers submit nutrient management plans, pass examinations and draw up reports, most of them would simply stop producing beef. To legislate such requirements for these operations would amount to an economic and political decision to return their land to brush and trees, devastating the economic and population base of many of our rural communities.

The NFU recommends that the legislation specify appropriately different regulatory requirements for, the different categories of agricultural operations, with rigorous regulatory requirements for existing and proposed intensive livestock operations, and less onerous requirements for smaller operations, particularly in regard to procedures and paperwork.

In the application of this legislation, the priority must be to apply the measures to the highest-risk categories first, that is, the intensive livestock operations. Smaller farms should have a significantly longer phasing-in period for any new regulations.

1310

The NFU recommends the phasing in of the regulations over time, starting immediately with the largest and most concentrated operations and allowing a longer time period and greater flexibility to smaller family farms.

The NFU is also concerned with the introduction of the measures proposed in the bill as they apply to smaller family-scale farming operations, that they will demand large amounts of paperwork and often significant expenditures.

We fully support the creation and enforcement of regulations that will help safeguard our water, land and air as well as the sustainability of our farms and our communities. However, as noted above, both the need for regulation and the ability to fulfill regulatory requirements are very different for smaller farming operations. Smaller family farms are already struggling to survive economically and cannot afford major additional costs. To the extent that the bill's provisions must apply to these smaller farms, the NFU believes the public as a whole, through the government, must take its share of the responsibility and the costs involved in bringing the smaller operations up to the required standards. The NFU

recommends that public funding be made available to farmers with non-ILO operations to assist them, up to a specified ceiling, with the costs of complying with the level of regulations that apply to them.

As for contraventions to the act once it is in place, it is important in the case of non-ILO farmers to distinguish between self-reported incidents where the farmer seeks the authorities' help to mitigate damage and cases where the farmer does not report a problem. We are also concerned that for some large ILOs, the fines contemplated for infractions might simply be budgeted as a business cost.

The NFU recommends that subsection 39(3) be amended so as to lessen or suspend the penalty in cases of self-reporting by individual non-ILO farmers and that subsections 47(1) and 47(2) be amended to increase the maximum penalty for contraventions by large ILOs.

For all the reasons touched on above, the NFU maintains that any lasting solution to the environmental and other problems associated with livestock production must be based on a comprehensive policy of support for the family farm and for environmentally sustainable farming methods which improve the quality of nutrients applied to the soil and minimize the contaminants entering the environment.

The NFU recommends that the government encourage and provide appropriate financial and technical support for family-scale farming, particularly for ecological and low-input approaches, while ending all support for the establishment and expansion of ILOs.

The NFU welcomes the committee's review of this legislation and encourages members to improve it. However, the bill is simply not capable of solving the problems it purports to address, particularly in the case of large intensive livestock operations. Our overall concern is that the bill, as written, will tend to allow and even encourage increasing numbers of ILO operations, while making things difficult or impossible for smaller livestock farmers.

No one—farmer, ILO, company, municipality or citizen—should be allowed to pollute, but it is neither reasonable nor useful to impose the same requirements for expenditure and paperwork on smaller family farms as are necessary for ILOs. We urge the committee to ensure that this distinction is respected in the legislation so that it can help to mitigate the environmental threats posed by ILOs without driving even more farm families off the land.

We ask that the committee attend to the specific problems we have pointed out in the legislation by recommending corresponding amendments. Many further detailed comments will be in order once the regulations are introduced, and the NFU asks that our input be sought and included in the process at that time.

Finally, we ask the committee and the government to recognize the inherent inadequacy of this bill, focused as it is on a single aspect of the problem, and to deal with the major environmental and other problems associated with ILOs. We urge that additional legislative and policy



measures be established, with full public consultation and input, to address these problems. Only in this way can we hope to reach the goal of safeguarding the environment and the health of all citizens while supporting Ontario's farm families and our rural communities.

Respectfully submitted by District 8, National Farmers Union.

**The Chair:** Thank you, gentlemen. You're 15 minutes, right on the money. We don't have any time for questions, so on behalf of the committee we wish to thank you for coming forward.

#### BURNBRAE FARMS LTD

**The Chair:** I wish to call forward our next delegation, Burnbrae Farms Ltd.

**Mr Conway:** Perhaps if I might, Mr Chair—and I know it's difficult, but you've offered the advice earlier—I think certainly I, and I'm sure other members of the committee, would like to be able to organize this so there's a little bit of time to ask at least a question.

**The Chair:** Yes, Mr Conway. On behalf of the committee, I would suggest to delegations that in most cases we do have a copy of your brief. We've found during the past week or so that many delegations will present for 10 minutes and leave five minutes for questions. So I would suggest that. We do have a hard copy of your information in most cases.

I would ask you to identify yourselves for Hansard, and please proceed.

**Ms Mary Jean McFall:** Good afternoon. My name is Mary Jean McFall.

**Mr Craig Hunter:** I'm Craig Hunter.

**Ms McFall:** I think we'll be within your time frame.

My family has operated an egg farm, Burnbrae Farms, in Leeds County since 1945. My children are the fifth generation of Hudsons to live at Burnbrae Farms, my great-grandfather having founded the farm as a dairy and cash-crop farm at its present location in the village of Lyn in 1893. I appreciate the opportunity to speak to you here today in a rural farming community where Bill 81 will have a very direct impact on each and every family.

This is an important initiative. I commend the Ministry of Agriculture, Food and Rural Affairs for developing this legislation.

Let me say up front that I share the ministry's interest in clear, consistent and reasonable standards to ensure that communities like Kemptville and Lyn and Spencerville—communities in this area and indeed all across Ontario—can thrive in a healthy and sustainable environment.

Our farm is one of the largest egg farms in Ontario, but it's also a family farm which has grown within the community in which we live. My family and many of the employees who work on the farm live in close proximity to the farm. My children attend the local school which actually borders on the farm. As you can see, my family has a vested interest in achieving a successful balance of all the interests of those who live in our rural community.

Many egg producers I know are strong proponents of environmental management practices. Craig Hunter, who is here with me today, will speak to you in a few moments about the practices that are undertaken on our farm.

The on-farm practices of farms like Burnbrae Farms complement an industry-wide stringent food safety and quality program that includes regular on-farm inspections by egg board personnel to monitor farming standards on the farm, so I am pleased to hear that the legislation under consideration here today will build on the best management practices that Ontario's producers have developed voluntarily. This is a critical point. Our management practices are homegrown solutions. They're developed by producers whose livelihood relies on agricultural production that's consistent with preserving our environment. It's only common sense for the government to consider many proven practices that reflect the ministry's goal to promote the economic development of rural communities.

I recognize the need to conform to proper, province-wide management practices. However, the new legislation must be free from arbitrary legal constraints and overbearing costs.

Some suggest that a minimum amount of land may have to be owned by each farmer based on the number of livestock on the farm. Some suggest that there should be restrictions on the number of animal units on a farm. We submit that such requirements would result in considerable inefficiencies in farming operations without necessarily addressing the environmental concerns that gave rise to them. We definitely recommend against the establishment of such arbitrary constraints on the productivity of Ontario's farms. We believe the key to achieving the right balance—that is, between environmental protection and productive farming—is for each farm to have a viable, verifiable nutrient management plan based on province-wide standards.

1320

As you know, the consultation process has only just begun, because Bill 81 constitutes enabling legislation, the specifics of which will be found in the regulations which have yet to be drafted. Like the others who have spoken to you here today, I would encourage the government to continue its consultation with farmers and other members of rural communities in Ontario in devising these regulations.

As to administration and enforcement of the new regulations, we would suggest that these actions should be taken by those who are knowledgeable of agriculture and sensitive to the manner in which farmers live and work. An example of that which has been raised already today is biosecurity concerns. We would suggest, like other people here today, that the Ministry of Agriculture, Food and Rural Affairs should be responsible for administration and enforcement of these rules. This ministry has a track record of dealing sensibly and knowledgeably with farmers in order to achieve common goals. Pollution and the prevention of pollution are



definitely the responsibility of the Ministry of the Environment. Agriculture is the responsibility of OMAFRA.

As we all know, farmers are resilient; at the same time, they are open to change. They are prepared to do their part in shouldering their fair share of the burden of the changes which will arise as a result of this new bill. But the goals to be met by Bill 81 are also common goals for the benefit of all of Ontario, and so we believe that all Ontarians must help to shoulder this cost.

In order to help farmers stay competitive, we are asking the government to provide meaningful financial assistance to farmers to help them implement these changes. We would also ask for a five-year phase-in period to allow the time for the education of farmers and indeed just for the implementation of whatever the new rules may be.

Once again, I would like to say that I applaud the government's efforts in developing this legislation. We would only ask that you strike a proper balance between environmental protection and productive farming across this province. Thanks very much.

**Mr Hunter:** As I already stated, my name is Craig Hunter. I oversee the egg operations at Burnbrae Farms and I am a resident of this community. At Burnbrae, we take pride in maintaining a leadership role not only in our community but also among many of Ontario's egg producers. Like Mary Jean, I appreciate the opportunity to speak to you today. I would just like to take a few moments to touch on two main things. One will be our experience with nutrient management, and the other will be some thoughts I have about some things we've learned from our egg operations that we have in Quebec.

Burnbrae Farms has been handling the manure generated by its egg operations, I believe in a very knowledgeable and responsible way, for many years. We are working closely with the Ministry of Agriculture and Food. We certainly work closely with agronomists and other experts in the area. We do soil testing and water testing on our farm on a regular basis. We built a depot for storage of dry manure on our farm so that when it cannot be spread, we can hold it there, and we are developing a formal nutrient management plan which is not only specific to the needs of our farm but is environmentally responsible.

The manure from our farm is purchased by local farmers for use as fertilizer on their fields. Believe me, it is a valuable commodity. We have more demand than we can supply. We hold regular meetings with the farmers who buy our product in order both to share information and to gain information from them on how we can put together best management practices to handle this manure. The managers in our operation who are responsible for nutrient management are certainly always improving their knowledge by attending various training sessions put on by OMAFRA and other organizations.

As you can see, farms such as Burnbrae have taken the initiative to deal responsibly with the manure from their livestock. But the solutions that we have developed, as

we've heard in many cases today, work for our site and our operation. Even though there are certainly a lot of general rules for best management practices, what works for one farmer doesn't necessarily work for others in terms of productivity and efficiency. Certainly, arbitrary legal constraints which could be directed at environmental protection but which ignore the specific circumstances of each local farmer will only undermine the success of the farming industry in Ontario.

As most of you know, agriculture and agri-food are Ontario's second-largest industry. As a matter of fact, in Leeds county, the county I live in, it is the largest industry. We don't want to place roadblocks in the way of its continued growth and success, especially if those roadblocks do not even serve the purpose for which they were established.

The key to finding the right balance, as has been said many times before, between environmental protection and farm productivity is the nutrient management plan. This nutrient management plan can be developed by the farmer with other experts and verified by the Ministry of Agriculture and Food. That, believe me, will meet the needs of the farmer and his neighbours. That said, I believe the farmer's nutrient management plan really should not be public information.

As I'm sure everybody knows, in all kinds of farming situations, the farmer is the steward of the land. He earns his living from the land and, with his family, he lives on the land. He has a vested interest in ensuring that the land and the waterways that flow through it are well cared for. The ministry has the background, the knowledge and the sensitivity not only to farmers but also to the rural communities of Ontario such that it really is best positioned to both administer and enforce the new regulations. It's a good partnership and we sure hope it's not going to be disturbed.

I just want to touch on the province of Quebec for a moment. In Quebec, serious nutrient management legislation was introduced a few years ago and the government recognized a couple of things very quickly. First of all, introducing new legislation such as this would cost the farmer a lot of money. The new laws are for the common good, so everyone at least should help pay for them. Also, by giving farmers an incentive to comply with the rules, the government can ensure faster compliance. The government of Quebec, as some of you likely know, gave a grant of up to \$30,000 per farm to assist in the construction of manure storage facilities, which is one of the main capital expenditures that will need to take place.

The second point I'd like to make is that a patchwork of municipal legislation simply does not work. We experienced first hand the difficulties which arise when one township makes different rules from its neighbouring township. For example, a township near our farm made a rule that it wouldn't allow manure from farms which were not located in that township to be transported and spread to their land. As a result, cash crop farmers who wanted the manure from our farm just couldn't get it.



Farmers who owned land in two different townships couldn't even transport their own manure from one farm to another. So other townships responded with the same kind of regulations and the farmers ended up spending more time fighting with their municipal bureaucrats than they did farming. The government's response, fortunately, was to legislate province-wide rules which could not be overridden by municipalities. Believe me, this system works very well for farmers in Quebec and certainly doesn't compromise environmental standards.

Bill 81 is an essential element of the continuing process of developing best management practices, something the farmers have been working on for some time, as you've already heard today. I hope the comments I've given you here today will assist in refining this bill, as it is needed by all the residents of rural Ontario.

Again, I'd like to thank the committee for the opportunity to come here and speak to you today. I believe it is an excellent consultation process. We do suggest that farmers, both large and small, be consulted and participate on a lot of the local advisory committees that I'm sure will be formed as a result of Bill 81 in order that we can continue to add a meaningful voice from agriculture. Thank you.

**The Chair:** I'll go to the Liberal Party. We've got about 30 seconds for any comments from each party.

**Mr Peters:** You describe yourself as having one of the largest egg farms but also a family farm. We heard the previous presentation talk about family-scale farming and family farms. I don't think, in the seven days, we've had a clear interpretation of what a family farm is. What is a family farm, in your mind? In your mind, it's what you've described here, but do you understand the dilemma?

**Ms McFall:** I think it's not fair to describe large farms as necessarily the perpetrator of the problems along the way. I think whatever rules are going to apply should be applied consistently across the board. As one of your presenters said earlier today, perhaps it depends, for example, on the location of the farm—is it near a well?—not necessarily on the number of livestock that are on it. It's the way you manage your farm, not how many livestock you have, that determines whether you're being environmentally responsible, in our view.

As to being a family farm, I'm not really sure what the definition is, but I know that certainly our farm is a family farm. We don't all work on it but we certainly all have a vested interest in seeing it go forward. There are many of us, actually, with a real tie to that place and would always like to see Burnbrae Farms operate from where it's located.

**The Chair:** I'd like to thank Burnbrae Farms. We appreciate you coming forward to the committee.

1330

#### DOMTAR PAPERS

**The Chair:** I'd like to call forward our next delegation, Domtar Papers, Cornwall. Good afternoon,

sir. We have a copy of your brief. Just in keeping with some requests, the committee is here for a dialogue. If you wish to perhaps summarize, we have 15 minutes. We would like to leave some time for the committee to participate.

**Mr George Velema:** My name is George Velema. I'm with Domtar Papers in Cornwall. I'm speaking for the corporation. I am the resource recovery manager at the Cornwall mill.

Domtar, as a corporation, is the second-largest producer of uncoated free-sheet papers in North America and the third-largest in the world. It is also a leading manufacturer of printing, publishing and specialty technical papers. Domtar is a major lumber manufacturer in eastern North America and the company also owns about 50% of Norampac Inc, which is the largest Canadian producer of containerboard and corrugated containers. Domtar, as a corporation, has about 12,500 employees across North America.

Domtar operates four pulp and paper mills in Ontario, one in Cornwall, one straddling the border between Ottawa and Hull, another in Espanola and a fourth in St Catharines.

Pulp and paper mills generate biosolids. In fact, the industry generates about 300,000 dry tonnes a year in Ontario. These materials were traditionally landfilled. Pulp and paper mill biosolids are dewatered, solid residues from the treatment of pulp and paper mill process waters, including settled suspended solids and biologically converted dissolved organics. These materials contain cellulose fibres and microbial mass—that's the bugs that have converted the dissolved material back to solid form. They also contain some clay, which is the filler in the paper, and lime, another filler in the paper to make a nice, white sheet.

Domtar Inc has developed a land application program for pulp and paper mill biosolids over the last six or seven years. We have an extensive program for the Cornwall mill and for the Ottawa-Hull mill. The degree of utilization of biosolids from the Cornwall mill is 100% and for the Ottawa-Hull mill is 90%. Together, the two mills produce about 25,000 or 26,000 dry tonnes of biosolids, or equivalent to about 87,000 tonnes of wet solids, "wet" meaning as is. These are dewatered materials. Their uses are in agriculture, silviculture and land rehabilitation.

The characteristics of the Domtar pulp and paper mill biosolids, which we call Domtar soil conditioners, are that they contain nutrients, meaning the macronutrients of nitrogen, phosphorus and potassium. They're very high in organic matter. They also contain trace metals at the scale that you would find in animal manures. They also contain some organic contaminants such as, for example, dioxins and furans, again at the scale that you would find in animal manures.

Biosolids—Domtar soil conditioners—also contain bacteria. These are the bacteria that do the conversion process for us. So we have some similarities to animal manure, and I have attached for your later reference some



comparisons of the Domtar soil conditioner to things like cow manure, municipal biosolids and other materials.

The difference between Domtar's soil conditioner and manures is primarily that the nitrogen contained in Domtar soil conditioner is contained in organic form, and therefore is not immediately prone to leaching or volatilization. Also, the bacteria do not originate from animals or humans, and therefore do not constitute a hazard to man or animals.

The land application program that we have has as its objectives: soil maintenance and improvement; to provide a source of nutrients as fertilizer; to use responsibly the resource that we have; and to divert materials from landfilling, as opposed to beneficial use. Land application of pulp and paper mill biosolids is safe, it's ecologically sustainable, it's environmentally responsible, it's agronomically beneficial and economically sensible. In terms of environmental impact, the use of Domtar soil conditioner has less environmental risk than animal manure and it has less environmental risk than municipal biosolids.

Domtar supports the proposed Nutrient Management Act because: it facilitates the responsible management of all materials containing nutrients; nutrient management plans will integrate and account for nutrients that go into the land from all sources; nutrient management plans will help balance nutrient application to crop requirements; the Nutrient Management Act will provide for standards in terms of material quality, methods of application, record-keeping and training and certification. All these will increase public confidence, which is very important to our program.

Our program has been in effect since 1994. It's been a very successful program with very good agronomic results and wide community acceptance. We have some 56 sites permitted under the Environmental Protection Act regulation 347 as soil conditioning sites. We have about 50 co-operating farmers or landowners. We have an ongoing research and development program with the University of Guelph right here at Kemptville College. We have a program that is run by the company with the help of contractors. We have a waiting list of many landowners who wish to participate in the program.

Domtar supports the proposed Nutrient Management Act provided that the new standards recognize the characteristics unique to pulp and paper mill biosolids, as demonstrated by an individual generator quality assurance/quality control program; that is to say, the nitrogen is in fact in organic form, that the phosphorus is relatively low, the material originates from wood, and the bacteria are non-pathogenic.

We do have some specific concerns. They relate to winter spreading on frozen ground. Our understanding is that this practice, which can be appropriate under specific conditions and types of application, could be banned because of perceived similarity to other biosolids. Also, we have a concern about the long-term on-site storage of biosolids—that is, the spreading site. This could be made unnecessarily restrictive. It could reduce the availability

of the material to farmers. It could significantly increase costs for us, while the storage of biosolids on the field prior to spreading has no environmental benefit, again because of the fact that the nutrients are primarily in organic form.

**1340**

Another concern is that farm co-operators using pulp and paper mill biosolids are required to have a nutrient management plan, which is fine. But at the same time, Domtar is also required to have an Environmental Protection Act certificate of approval for the same acre of land. This might give rise to duplication. It raises the question of precedence. Is it the nutrient management plan or the certificate of approval which takes precedence? It may add to the complexity and may limit the availability to Domtar of the co-operating farmers and it may force us to obtain more new permitted sites. There is a question of liability for non-compliance.

Our recommendation is that there be separate standards for pulp and paper mill biosolids, as opposed to other sources of nutrients. We recommend that there be no arbitrary change without scientific justification to the current standards or guidelines for the storage of biosolids or for winter spreading of pulp and paper mill biosolids. Especially, we would recommend that there be no outright prohibition; further, that there be no prohibitions relating to pathogen content for pulp and paper mill biosolids that are known to be free of animal and human waste.

Domtar requests participation in the development of regulations or standards as they relate to pulp and paper mill biosolids under the proposed Nutrient Management Act.

I have some attachments to this presentation which the committee members may want to look at, at their leisure. I think I have a few minutes for some questions.

**The Chair:** Yes, we have three minutes. Thank you, Mr Velema. The NDP for one minute?

**Mr Bisson:** No, that's fine.

**The Chair:** Can you do a question and answer in one minute?

**Mr Doug Galt (Northumberland):** Do you want me to start?

**The Chair:** Go ahead, sir.

**Mr Galt:** Thank you very much for your presentation; interesting content. My question is along the line of using this paper sludge. You mention nitrogen in it, but I understand a lot of nitrogen is needed to break down that cellulose and use it.

What's running through my mind is the sewage sludge that is being composted—to some extent, that would be the preferable route to go—needing carbon, manures that could be composted needing carbon, and this is a source of carbon getting together, composting it together prior to applying it to the fields, as one question.

The second is, gasification, as your sister plant in Quinte West is doing with the—

**Mr Velema:** Norampac?

**Mr Galt:** The stuff they spread on the roads anyway.



**Interjection:** Dombind.

**Mr Galt:** Dombind, thank you. They're developing a plant to gasify that and take the hydrogen off and use it as fuel to produce electricity, which could be done with paper sludge as well, I understand.

Third, have you considered using this cellulose as a source to create ethyl alcohol? Certainly, that is possible out there by adding enzymes etc. Three questions on other suggested considerations for paper sludge.

**Mr Velema:** Let me start with Norampac. The material that was spread on roads is really the lignin from the wood. If you take a piece of wood, the two primary components are the cellulose fibre and the lignin, which is the glue in wood that holds the fibre together. So when you make paper, you separate the two by dissolving out the lignin. In the case of Norampac, that lignin is kept separate as a liquid and that liquid was heretofore used on roads.

Cornwall has taken a different approach. They have built an \$80-million facility to take that lignin and put it in various manure pits or concrete containers where bacteria eat this lignin, use it as a food source, so that dissolved organic material is converted to the bodies of these bacteria.

Those bacteria are then added to stray cellulose fibres that come from another part of the process. So we have the wasted cellulose fibres and the bugs from the secondary water treatment process combined to make this biosolid.

What I need to stress is that there are two types of treatment: primary, which takes out the cellulose fibres and suspended solids; and secondary, which is the biological treatment of the dissolved organic matter. The two together provide carbon, in terms of organic matter—that's the cellulose fibres—and the nitrogen, being the bodies of the bugs. Together we have an almost ideal compost-type material. In fact, the carbon-to-nitrogen ratio of that material is similar to compost, but of course it has not been composted. The type of material you refer to as needing more nitrogen is only the primary-type material, the cellulose fibres only, and that requires some additional source of nitrogen.

**Mr Peters:** You make the comment in here—and I don't profess to be a scientist—that "bacteria do not constitute a hazard to man or animals." I guess it all comes down to the scientific justification for applying your biosolids on the land. There's research and development going on here; you've got the Pulp and Paper Research Institute of Canada. Is this independent research that is taking place or is this research that is being funded by the companies to look at the safety aspect of it?

**Mr Velema:** In terms of independence, the Pulp and Paper Research Institute of Canada is an industry-supported institution. The research that they did specifically was done by Health Canada. Is that independent? I don't know. What is independent I can't answer. You'd have to judge on that yourself. As for the research that is done by the University of Guelph at Kemptville

College, we support the program financially but it is at arm's length and it is independent, as far as I'm concerned.

**Mr Bisson:** Just a quick question. When you're going through explaining the primary, secondary and tertiary treatment of your waste—it's the same idea up in Kapuskasing, Iroquois Falls and all those places—you wouldn't have to stop doing that because of this legislation. What does it mean to you as an operator? You still would be able to treat your waste the way you do.

**Mr Velema:** Yes, absolutely. But the question is, how is the waste handled? The material is now dealt with as a waste and all the process of applying it to land is under the waste regulations under the EPA. Now we have another set of rules coming at us under the Nutrient Management Act and we don't know how that's going to jibe.

**The Chair:** Thank you, Mr Velema. We appreciate the report from Domtar.

#### DAIRY FARMERS OF ONTARIO

**The Chair:** I would now ask the Dairy Farmers of Ontario to approach the witness table. Good afternoon, sir. I'll just repeat again for all delegations that it was suggested they allow five minutes for questions. We would ask if you could accommodate that.

**Mr Gord Coukell:** I'll attempt to do that. Obviously, you have our brief and I'll just highlight it as we go.

We are pleased to be able to make this presentation to you today on behalf of the Dairy Farmers of Ontario. We sincerely believe that the goal of the proposed legislation must not only be environmental protection, but the act must also allow for continued, sustainable growth within the agricultural industry.

The Dairy Farmers of Ontario, along with many of the other commodities, have been involved in extensive consultation with members of OMAFRA, MOE and other government officials over the last three and a half years. As such, we believe Bill 81 represents the culmination of these discussions with the government personnel and are basically supportive of the act. However, we would like to raise a few issues that in our mind need to be either clarified or added to the current proposed legislation.

1350

Number one is biosecurity. DFO requests that the proposed Nutrient Management Act be amended so that biosecurity protocols present on farms be recognized by the legislation. The personnel entering farms in accordance with the Nutrient Management Act must take precautions to minimize disease transfer. We recognize, however, that biosecurity protocols should not and must not be used to prevent access and follow-up on nutrient management issues.

Municipal jurisdiction: concerns have been raised that municipalities could use certain provisions in the Planning Act to supersede or circumvent the Nutrient



Management Act. Inconsistency between municipalities due to these provisions will definitely threaten the viability of primary production agriculture in Ontario. DFO believes that the Nutrient Management Act should be followed by all municipalities and circumvention of the act must be avoided.

Ministry responsible for administration: there are several references to “minister” and “ministry” in the legislation. It is unclear at this point in time whether this is referring to the Ministry of Agriculture, Food and Rural Affairs or the Ministry of the Environment. DFO feels that the Nutrient Management Act should be administered by OMAFRA. OMAFRA should provide administration, extension and audit functions. We recognize and accept that if the audit function of plans are intentionally not being followed, the auditors may need to administer some type of a monetary fine system as well. This act deals solely with application of nutrients to agricultural land and therefore it would be most logical to place it in the ministry that holds the most expertise with primary production, crop nutrient requirements and availability of nutrients from different sources. We accept the fact that if pollution occurs, the Ministry of the Environment has today, and we would expect in the future will continue to have, the authority to inspect and enforce regulations in that regard.

Separation of enforcement, extension and audit roles: during the discussion of this bill, one of the confusing parts around it was the enforcement, inspection and extension and audit functions. DFO feels that there must be a significant extension component as well as an effective audit mechanism that in itself will require some enforcement ability. The role of extension provider and auditor would most appropriately be in the hands of OMAFRA.

Moving on to page 4, we think it must be very clear in this regard that there are two very distinct enforcement issues to be dealt with. It is our view that enforcement of the Nutrient Management Act infractions that are not causing pollution should and could be dealt with effectively by OMAFRA. This would not be a new role for OMAFRA since they performed a similar role in the dairy industry for many years when they provided extension and enforcement of regulations under the Milk Act. If OMAFRA were to identify a nutrient spill or a pollution, such an incident then would be turned over to MOE for follow-up, and it could very easily differentiate those two roles.

If the act is to be successful in providing the environmental protection that is expected, then adequate resources must be provided to do the job. This will mean more staff and budget for OMAFRA. The real beneficiary of this process is the environment and the Ontario public, and therefore public resources must be provided to do this work.

We have detailed how a complaint-handling system could be handled. We are supportive of the concept of local county environmental response teams to deal with complaints and there is a suggestion there as to how that

might work. This format is somewhat similar to the present process that the Ontario Farm Animal Council has in dealing with animal welfare issues and this is working quite well in that regard.

Privacy of information: DFO shares concern about the public availability of nutrient management plans created with this act. Although there is little problem with many parts of nutrient management plans being public, certain parts may contain sensitive or even protected information around certain crops that may be grown. Once a nutrient management plan has been audited and compliance has been determined, a certificate of compliance should be issued. This certificate and a summary of the nutrient management plan should be the public document, not the actual plan. We believe the actual plan should remain private. By doing this, the audits and adherence checks will be done consistently by trained OMAFRA staff, rather than a public audit on a complaint-by-complaint basis.

Economic impact: it's expected that the regulations written under this act will require some producers to make a financial investment in order to comply. DFO requests that an economic impact study be carried out by the government to determine the financial implications of this act. It is our view that many of the benefits of this act will accrue to the general population and not just to the producers. Therefore, adequate funding from public dollars must be provided so that Ontario producers can remain competitive with producers in other provinces and countries.

In the area of environmental assessment, we believe that the environmental farm plan should be the basic tool of environmental assessment on farms in Ontario. If an EFP indicates a concern pertaining to further expansion or building, then perhaps some additional environmental assessment may be warranted. Detailed environmental assessments should not become a way of life for all agricultural buildings or in any way an excuse to stop or hold up agricultural practices in an area. There may be some very sensitive soils or some sensitive areas where further study needs to be done, but they should be the exception and not the general rule.

In conclusion, and I've skimmed this very quickly, we have appreciated the opportunity to be involved with the discussions leading up to the introduction of the act. We would request that the same consultation be made available as regulations are written under this act. We believe the regulations will have a large impact on many producers and the expertise of the commodity groups and general farm organizations should be used in this regard.

**The Chair:** We have about a minute and a half for each party for questions and answers.

**Mrs Munro:** Thank you very much for coming here today to give us this perspective. In the discussions that have taken place over the hearings, there seems to be an issue with regard to regional issues. We heard earlier today that perhaps there should be a recognition of those. We've also heard people who have spoken about the unique differences—questions, for instance, over issues



like animal units and things like that. I'm just wondering whether you would offer any comment on the need to look at the consistency, but in the framework of the practices, from a species-specific as opposed to a regional approach.

**Mr Coukell:** We view that it should be a provincial approach across the board. There may be some regional differences, but I think if you're going to have consistent regulation and consistent legislation across the province, then you can't have the regional differences. This is what we saw developing with each municipality going their own way, and that's simply not acceptable. It comes down to, when you get two municipalities side by side going different ways, then there will be producers with land in each municipality who end up with different rules depending on which field they're in, and that is certainly not acceptable. So we support the provincial.

**Mr Peters:** Thanks very much for your presentation. We previously heard references made to other jurisdictions—whether it be Quebec or the United States—where financial support has been provided for capital improvements. You make reference here to the economic impact as a result of this legislation and its accompanying regulations. What would you like to see in an economic impact study?

**Mr Coukell:** I think initially we, and the government, need to realize the scope of where this legislation could take us.

**Mr Peters:** Have you looked, just within the dairy industry, at the potential impact?

**Mr Coukell:** Yes, we have, and even at just the enforcement of the legislation from your perspective. You need to realize that this will not happen without significant dollars, and it's not taking dollars out of current budgets to do it. This has to be new money, in our minds. Then you've got the whole other side of the capital required on farms, and it will be different for different commodities and so forth. There needs to be a thorough study on what is the far-reaching economic impact of this legislation.

**Mr Bisson:** That's fine.

**The Chair:** Fine. I wish to thank the Dairy Farmers of Ontario for coming before the committee.

1400

#### DUNDAS COUNTY FEDERATION OF AGRICULTURE

**The Chair:** Our next delegation is the Dundas County Federation of Agriculture. Good afternoon, gentlemen. We have 15 minutes. We are asking that five minutes be used for questions. Could we ask you to give us your names for the Hansard recording.

**Mr Gordon Garlough:** We will. Thank you for the opportunity. My name is Gordon Garlough, from Williamsburg, Ontario, representing the Dundas County Federation of Agriculture.

**Mr Leo Laughlin:** My name is Leo Laughlin. I'm a dairy farmer in Dundas county.

**Mr Garlough:** I'm going to go through this, not reading it, but basically dealing with the essential points in each paragraph. In the background section, on the first page, in the first paragraph, I'm simply trying to point out that the farmers of Ontario, through the Ontario Farm Environmental Coalition, have been working together themselves and with various ministry staff over the last number of years on this nutrient management issue. In 1998, that group published the nutrient management planning strategy, which is the general direction in which we have been going during the time up to now. I hope you will keep that in mind and keep on the path that strategy suggests and that OFEC—the Ontario Farm Environmental Coalition—working group has been suggesting.

In my mind and in our minds, the content of the June issue of Bill 81 is fairly reasonable, except in the attitude it appears to take. I've put it down here that the content seems to follow fairly closely the ideas farmers and ministry staff have already come up with as far as nutrient management is concerned, but in reading over the act, it seems to take a very punitive attitude toward farmers. I really hope that is only an attitude and not something that continues on from this point.

The next paragraph deals with something that's maybe very basic, but I think we all need to keep this in mind. In southern Ontario, where most of the population is, all our water comes from precipitation, and that precipitation falls mainly on land that is farmland or is under the control of farmers; a very high percentage of it is. Therefore, farmers do have a very important role in the quality of surface water and the quality of groundwater in Ontario.

Going on to paragraph 3 and the simple science that's involved in the water cycle, the nutrient cycle, and all those—I don't know where it is now, grade 5, 6 or 7 science things that are maybe a little bit below us here, or we think they are—I think we still need to keep them in mind: the principle of water falling on the land, the natural capacity of that land to filter and treat the water and so on; the nutrient cycle issues and the fact that farmers are dealing with nutrients as an input and that those inputs are in most cases a cost to the farm producer; and the farm producer looking at minimizing the nutrient inputs in order to maximize his crop production and maximize his end returns. Wasting nutrients is an economic waste to the farmer, as well as a danger to the environment. As long as we keep in mind the fact that in terms of protecting the water supply, by focusing on nutrients, we're looking at the same aim: the farmer producing the best crop at a minimum cost and protecting the environment at the same time.

The last point I wanted to deal with there in the introduction is what has happened to the farm situation since Walkerton a year ago. Farmers, of course, have come under scrutiny, and I just want to point out a case in our own county where we have a major water well in another municipality in a very sensitive aquifer situation. We have farmland all around it. That well has been



monitored under the certificate of approval from MOE for the past five years since it was constructed, with annual monitoring reports. I have a copy of the most recent monitoring report of that area and, as I've said here, this water comes as close to perfect as any water could possibly be. Water supply and intensive crop production can get along in the same area. That's the simple point I would like to make. There are a couple of references to that in the addendum in the last two pages of the report.

Going on to the body, I've just divided it out according to the sections of the proposed bill.

Part I: we strongly request that OMAFRA be the responsible agency. The Ontario government essentially dissolved—disintegrated—a large part of the OMAFRA extension role a few years ago and I think we have to re-establish that role as a working link with farmers. It's the logical way to go with the aims of this particular bill.

Part II: basically, we feel that OMAFRA again has a role in informing farm producers about the standards and regulations. We strongly urge the government as well to carry through with its plans to have local advisory committees. It's my feeling, as has been pointed out already, that those local advisory committees can basically clear up 90% or 95% of the problems right then and there before they develop into what I have called here "hard cases."

Part III: just one comment there. Whatever enforcement system is put into place, we ask that there be an appeals process for that.

Part IV: inspections and orders: I guess with that section, again, we go along with the previous presenters heard this afternoon, that if it is provincial and one central agency does it, it need not be farmed out to this group or that group or some other group around the province.

Parts V and VI: we support those provisions as long as there's an appeals process in place.

Part VII: I guess we have one positive comment to begin with. We see the provincial intention to supersede the various municipal bylaws—the one-upmanship situation that we've had—as good. However, we do have a few concerns and we hope, for instance, that the government, whichever ministry is finally chosen, will not simply take this and then delegate it out to other local organizations or local structures. We respectfully but strongly recommend that the administration be done by a provincial agency.

Secondly, it appears that the government is planning for farmers of Ontario to pay nutrient management administration costs, that the minister may establish fees. The object of Bill 81 is protection of our water resources. With the background that I mentioned from page 1, this is a public resource and the public has a responsibility in this whole process. Farm fees should be nominal or zero.

1410

Over to page 4, one point that didn't fit exactly under any of the sections and that was referred to in previous presentations, most recently by Mr Coukell from the

Dairy Farmers of Ontario, is that we look forward to some sort of provincial funding, some sort of provincial incentive or assistance, for bringing existing farm operations to whatever standards Bill 81 regulations finally set down. As part of its strategy, the government of Ontario must design some sort of incentive or cost-share program that recognizes farm financial limits as well as the public stake in the water protection process.

In summary, the present version of Bill 81 appears reasonable in issues of land use and agriculture that have a link to water quality issues. However, we feel the punitive tone of the act as it stands is totally inappropriate. Farmers of Ontario at present are not the villains that the present tone of Bill 81 suggests.

For your committee and this consultation, I think there are two key principles that we need to keep in mind: first, we hope that the government of Ontario will consult on an ongoing basis with the Ontario farm community and farm community stakeholders like OFEC in developing the suggested regulations and standards; secondly, that the government of Ontario, as part of its water protection strategies, invest public funds in a program or programs to facilitate farms upgrading to whatever the eventual standards are under Bill 81. Bill 81 should be put in place in a series of phased-in steps. Bill 81 should be designed to build on our existing knowledge and our existing situation, and not simply follow the inclination to regulate, regulate, regulate. Thank you.

**The Chair:** Thank you, sir. We've got one minute for questions from each party. We'll begin with the Liberals.

**Mr Cleary:** I'd like to thank you gentlemen for your presentation. I just was wondering a little bit: you said "local advisory committees." How would they be made up and who would be on them?

**Mr Garlough:** That is, I believe, to be part of the rules that the government will supposedly come up with, but I hope they would represent both farm and municipal people, farm and non-farm people, whether they were on a county area, a regional area, like several counties together, or whatever. But they would basically be a troubleshooting committee that could come in and look at a complaint and say, "Yes, this is valid," or suggest things that could solve it right there, as opposed to going on and making a real big issue of it.

Mr Coukell mentioned the Ontario Farm Animal Council using this type of set-up to deal with problems related to the treatment of animals and so on. It works well there; I don't see why it couldn't work here and solve a lot of those cases before they go any further. If someone has a complaint, the committee looks at the complaint and says, "No grounds; they are meeting the requirements," or, in the other case, to the one that the complaint is against, "You are not meeting the requirements. Are you willing to make a change?" In a lot of cases, I'm sure the thing would be solved right there.

**Mr Bisson:** Thank you very much. It's a very well put together brief. But on page 3 of your brief, you have



“part IX, commencement, short title,” but you don’t have any comments under it. I’m wondering what you think.

**Mr Garlough:** I had no negative or positive—

**Mr Bisson:** That’s what you were getting at.

**Mr Garlough:** Just no comment. “No comment,” I guess could be written in there.

**Mr Bisson:** That’s all I needed to know.

**Mr Galt:** Thanks for the presentation; very thoughtful. Just on your first paragraph, the punitive tone, I wanted to make reference to that. Certainly that is not the intent of what we’re trying to do, but I think what you’re reading into it—and I’m not surprised; I can follow your thinking. It’s an enforcement style of legislation, and therefore it does appear that way. Between Mr Barrett and myself, we’ve been on the road now and involved in consultations for about two years, working on this, trying to get it to as practical a level as we possibly can. I just wanted to make a couple of comments, and then I have a question.

The other is flexibility. There has to be a standard across the country, but still recognizing the type of soil variation, the slope of the land, the variation in winters from, say, Chatham to New Liskeard, in winter spreading: how do you write a regulation along that line?

The question I wanted to ask you has to do with public funding for the public good. Are you talking about matching funds? Are you talking about tax credits? Are you talking about tax deductions? Are you talking about full grants, which I don’t think you have a hope of getting? I’m kind of curious what you’re thinking, how you would expect the government to design something.

**Mr Garlough:** As far as total outright grants with no farm portion, no; shared funding, definitely, but whether that’s shared funding through a grant, partial funding through a grant type of incentive, or if the government feels it can make it more effective by being a tax-related incentive, I don’t think that really makes a lot of difference. The point is that depending on what the regulations end up being—what regulations finally come out are going to define what the farmers on an existing operation are going to have to do. If those final regulations are anywhere near as severe as the tone of this act suggests, there are going to be some big costs involved just for upgrading existing operations. Somehow, the cost of that has to be shared, public and the farm. The farmer simply can’t absorb it. If you force the farmer to absorb it, what will happen is that many of the modest-size operations like either Leo or myself will just say, “We can’t do it. We’ll sell out to somebody else who is part of a larger conglomerate and can probably write off the cost over a much larger unit of production.”

**The Chair:** Mr Bisson, you had a further—

**Mr Bisson:** A very quick question: the regulations for this will be done after third reading. If that’s the case, would you vote for or against this bill, if you were one of us?

**Mr Garlough:** That’s a tough question. I guess I’ll speak to that personally. I’ve been involved on this nutrient management working group at the province for a

number of years, and I would like to see it go ahead and hope that the government has the good sense to come up with a reasonable set of regulations, standards.

**The Chair:** Thank you, Mr Garlough; thank you, Mr Loughlin. We appreciate the input from the Dundas federation.

## GRENVILLE FEDERATION OF AGRICULTURE

**The Chair:** I now wish to call forward the next delegation, the Grenville Federation of Agriculture. Good afternoon, sir. We have 15 minutes, as you know. We’d appreciate five minutes for questions if possible, for the committee to be part of this, and if you wish to give us your name for Hansard.

**Mr Adrian Wynands:** My name is Adrian Wynands. I’m president of the Grenville Federation of Agriculture. Today I’m speaking on behalf of over 300 farm families in Grenville county. I’d like to thank you for the opportunity to make our concerns known.

As farmers, we’re not against nutrient management plans being implemented; however, we do have concerns and suggestions with education, regulations, cost, biosecurity, policing and enforcing.

With education, we feel it is critical that farmers be educated. Our thought is that OMAFRA needs to have a workforce able to visit and assist farmers in order to educate them on preparing a nutrient management plan. In some of the meetings that I’ve been in on the South Nation watershed, we’ve had OMAFRA engineers in and they’ve said, “On the smaller farms, you’re just going to have to do a nutrient management plan. Just keep it on file at home; no problem.” But there’s nothing to say that that nutrient management plan will be done right, so farmers need to be educated on that. Another thought we had was that perhaps students from the agricultural colleges, funded through government assistance programs, could do this next summer.

1420

**Regulations:** The farm community must have input into the development of the regulations for Bill 81. We must be involved in the next process. A reasonable time frame must be established so that implementation of regulations does not cripple farm operations. Provincial legislation must supersede all municipal bylaws and that must be done immediately.

**Cost:** The nutrient management plans are for the betterment of society; therefore, all society should participate financially. Healthy futures would seem to be an appropriate resource for these improvements, or a specific fund jointly funded by the federal and provincial governments to address this need. Farmers cannot bear this cost alone. They have no way to recover the costs incurred. A suggestion we have is that you use 1% of the 8% provincial sales tax which is in Ontario right now to implement programs not only for farmers but for all clean water programs, whether it be municipal water upgrades or for the farm upgrades.



Any fines levied against farms should go directly to the fund that is delegated to this bill and its regulators. The costs of enforcement should not be downloaded to the farming community. An example we were thinking of is, if the OPP fines a speeder, right now the speeding fine goes directly into general revenue. We would like to see any funds stay with the farm community, and also the farmer should not be paying for the enforcement officers.

**Biosecurity:** Concerns with biosecurity are that industry standards must be adhered to. Enforcement officers should make all possible efforts to contact property owners and tenants before entering a property, contact to be either in person or by phone and have proper ID and credentials to be presented, and biosecurity measures are to be undertaken before any access is allowed.

**Enforcement and policing:** Enforcement of the nutrient management plan must not be downloaded to individuals, conservation authorities or private companies. We believe OMAFRA is the lead ministry that should be used for enforcement. Therefore, the enforcement will be the same across the province for all of Ontario. An enforcement officer should be specifically trained in agricultural issues.

We also feel there should be a fee to register a complaint. If a complaint is unfounded, then the complainant must pay all costs: court, lawyers etc. Once a complaint has been filed it should be heard by a peer review board first, and there must be an appeal process for the farmer.

We sincerely hope these issues we have brought forward will be seriously considered. Thank you for your time and consideration.

**The Chair:** That gives us about three minutes for each party. We'll begin with the NDP.

**Mr Bisson:** There are a lot of good recommendations and ideas in here with regard to the advice you give the committee. I want to come back to the question I asked the last guy, because it occurred to me, as we listened to everybody who came forward and talked about the legislation, that generally I think we all agree on the direction in which the legislation is going but people seem to be concerned about the application of the regulations themselves. Just so people understand, when we vote on legislation at third reading we don't see the regulations. Regulations are normally after that fact. The question I'm going to ask people is, what suggestion do you have for us as legislators? Should we be pressuring the government to make sure that the regulations are done way before it gets to third reading? My worry is, as I listen to people at Domtar, I listen to the people who came in earlier and presented from the various associations, the woman who was here earlier in the business of disposing of waste, that depending on how the regulations are written, it could mean a whole bunch of things. It could have negative implications to all of those parties, and I have a bit of a problem trying to vote in favour of something that I generally support but don't know how it's going to work out.

My question is this: if the government doesn't come forward with the regulations before third reading, should I vote for this bill?

**Mr Wynands:** No, I think we should make the government come out with the regulations first and we should have input into the regulations.

**Mr Galt:** I appreciate Mr Bisson's question and I appreciate your response.

Technically—and that doesn't mean we can't be talking about it and showing some of the things that are evolving—there's no authority to develop regulations until that third reading is through and you have the act in place. That doesn't necessarily have to be an excuse; you can be working on the regulations.

Between the ministry and some of the studies that Mr Barrett and I have carried out, an awful lot of the consultation has been done: staff going across the country, the ministers having some joint meetings. I can assure you there's going to be a lot more consultation prior to a lot of these regulations being developed. They're not all going to be developed right at the beginning, because of the intent of the phase-in period. I just wanted to assure you about consultation. It's two years that I've been involved with this so far and we still don't have the third reading through. So by the time it gets through it's probably going to be two and a half years, and then extensive consultations after that as we develop regulations.

I appreciate your point near the end on the enforcement, unfounded complaints or frivolous and vexatious. Certainly that was a lot of what the right-to-farm legislation was about, with odour and dust and noise what it was addressing at that time. I certainly appreciate your concern here and I can see that one raising its ugly head down the road. I appreciate your thought in that connection.

I guess the other comment has to do with biosecurity, and that's come up on a regular basis. My hat is off first to poultry producers who locked their doors first, and then the swine producers who locked their door following. Now it sounds like the dairy and beef producers are starting to lock their doors. Probably the best biosecurity you can have is a lock on the gate to keep people from coming in. But your point is well taken that just because a door isn't locked doesn't mean that enforcement officers should just walk in without proper preparation, such as not having been on a farm that day, having clothes that are totally laundered, shampoo, shower, the whole works. Some viruses will be carried for several days in nostrils etc. Those kinds of things have to be addressed and enforcement people have to be people who understand livestock and agriculture; there's just no question.

**Mr Conway:** Thank you, Mr Wynands. I have one question with two parts. I take it from the portion of your brief that deals with enforcement and policing that the less you see of the Ministry of the Environment in this whole business the happier you'll be.



**Mr Wynands:** That's right. We feel OMAFRA has a good working relationship with farmers. It has been fragmented with the closure of a number of OMAFRA offices, but this would be a goodwill gesture by the government if they put some money and some resources back into OMAFRA, which is supposed to be there to help the farmers.

**Mr Conway:** Let me play devil's advocate here for a moment. I know your county pretty well. With what you said in mind, what might I find if on a nice September afternoon I were to go around any or all of the 300 farm operations in Grenville county—and imagine a standard that's likely to come out of this legislation at whatever point in the future and sort of apply it to current operations—would I pretty well expect that most operations are going to be already close to a state of reasonable compliance, or would there be some bad actors who could really embarrass the vast majority of the 300 farm families and farm operations in Grenville county? I just would like to get a sense from you. What would I find if I went out there today?

**Mr Wynands:** I think you would find the majority of farmers are adhering to this as best as they can. Like you've probably heard from most of the presenters, farmers are excellent stewards of the land. We drink our own well water, so it's not in our interest to pollute our water.

**Mr Conway:** Is there a situation that might really be not the sort you would want the CBC or the Ottawa Citizen or the Brockville Recorder and Times to come and put on their front page or as the lead item on their newscast?

**Mr Wynands:** There are always a few farm operators who work in that way.

**Mr Conway:** How willing would those people be to accept the kind of friendly persuasion of their friends and neighbours to clean up their act so that something far more intrusive might not happen to everybody?

**Mr Wynands:** I think they would if proper education was provided. But there are always going to be people who feel, "It doesn't apply to me, and I can do whatever I want."

**Mr Conway:** What do we do with those guys? What do we do with these really bad actors? I think you're right. My sense is that most people are good and co-operative most of the time, but there are some really bad actors who can be very mulish and persistent in their unwillingness to support the public good.

What's it going to take to get those men and women to play ball by the new rules?

1430

**Mr Wynands:** I don't know. A lot of times I like to take the analogy of the 401. If you take a look at speeders—

**Mr Conway:** You're being bad now.

**Mr Wynands:** —how do you stop the bad ones who are doing 170, 180 kilometres an hour down the road? It's pretty hard. Even with all the enforcement we have, all the police officers, still the average is running 125 or

130. So everybody's breaking the law, but some break it worse than others. Some will fall in the same category with farms. The majority of farmers, 90% of them, are following proper nutrient management guidelines because it's in our best interest. We don't want to waste nutrients, but then there's always some people that just say, "Oh, well." They don't care. How do you change them? No. Public attitude is about the only way. Education.

**Mr Conway:** But if some of that education is the kind of education we sometimes see in the national media, boy, that could be very painful for everybody.

**The Chair:** Mr Wynands, I wish to thank the Grenville federation for coming forward.

#### WILLIAM LANGENBERG

**The Chair:** Our next delegation is an individual, William Langenberg. Good afternoon, sir. We have 10 minutes for an individual presentation.

**Mr William Langenberg:** My name is Bill Langenberg. I'm a former crop advisor and a lecturer-researcher here at Kemptville College, which I left a few years ago. The last few years, I have been spending my time with the Composting Council of Canada and the composting industry.

When I am looking at your act here, I don't agree with all the exact wording because they may have a different influence on the future terminology when we're applying organic material containing nutrients to the land. On page 6, the third line down, it says, "'natural environment' means the air, land and water of the province of Ontario or any combination or part of them." Now I wonder, if I paddle across Lake Ontario and I'm halfway across, if it's not natural anymore. I think it should read the "physical environment," because that's exactly the soil, water and air. The "natural environment" itself is actually the flora and the fauna that will be affected in the years to come when we are reducing our nitrate applications to the soil.

The next line is, "'nutrient' means fertilizers, organic materials, biosolids, compost, manure," and so on. I honestly believe, when I speak with the composting facilities—actually, this coming November the composting council is meeting in Montreal and they're looking for policies and directions on where to head in the years to come. So what I've done here for you is I actually, when I talk about manure—manure is an organic material containing nutrients. It involves a lot more than just animal manure. Here, I gave you a definition on page 3. Manure is an organic waste material containing nutrients. Its organic matter content is provided by the excrement of animals, with or without organic bedding, and/or by constituents derived from the collection and/or processing and reuse of organic waste material. That is what we should be looking at when we're applying manure to farm fields. So I would really like to see in the act a distinction between the animal



manures that have been discussed predominantly today and the other remaining organic manures.

Then we are looking at all these other organic wastes, like mixed organic municipal solid waste, source-separated municipal solid waste, selectively collected residential kitchen waste, selectively collected yard waste—Ottawa, for example, is selling a lot of yard wastes as green compost—and selectively collected restaurant, grocery, and store food waste which is field-applied.

The other thing is the term “biosolids.” I would like to see this removed from the act. The main reason for this is that the term “biosolid” was introduced in the mid-1990s to make it more consumer-friendly, which of course didn’t happen, because now, every time they see the word “biosolid” in the newspapers, people get their ears up because they know biosolids are either related to municipal sewage sludge or pulp and paper sludge. I can guarantee you that in the years to come, when the Canadian and Ontario composting industry improves the quality of its compost by sort-separate collection, it will become available as biocompost. To the consumer it will be extremely confusing to look at the words “biosolid” and “biocompost,” because they will definitely relate the two, which is absolutely wrong.

Also, I’ve seen a lot of compost being produced not only in Ontario but across the country—actually, in the second part here I said “decision on quality and use of remaining organic manures.” If we start applying composted municipal solid waste to farmland, it will not only involve the nutrient aspects but also the heavy elements, and there are about six of them. At the present time the Ministry of the Environment is responsible for giving permission when compost can be applied, based on the quantity of heavy metals. Now, under this new Nutrient Management Act, there are about 30 quality criteria involved before permission can be given. If the word “quality” is used in OMAFRA’s act, then I believe OMAFRA is responsible for looking after the application of municipal compost to farmland. I think for a farmer it’s extremely confusing to get permission first from the Ministry of the Environment on the six or seven heavy metals and, second, to get permission based on the nutrient management. It should all be combined into one list of criteria.

The Woods End Research Laboratory in Mount Vernon in the States has done an elaborate study on the quality of compost across Europe. I’ve seen a lot of compost produced that is mixed with sand to get the level of heavy metals down. Once that happens, the organic matter content goes down. There should be criteria within OMAFRA that qualify compost based on the minimum organic matter content, which should be around 20% of the fresh material. Any compost produced in Ontario which has an organic carbon or organic matter content of less than 20% should have another designation. You cannot take it back to the landfill site, because that’s not the purpose of making compost. Any compost that has less than a minimum quantity of organic material should

be able to be sold to farmland as black soil or through the retail trade. So there should be a designation within the act to dispose of compost that does not qualify under the standards.

What I see quite often around the country, and last year I saw a brand new facility out west, is that sewage sludge is heavily used in the activation of the composting process. The relationship between carbon and nitrogen is extremely important to get the composting process going, so often they use sewage sludge as it is municipal compost. That should be banned in the Nutrient Management Act. There are other ways of applying nitrogen to the composting process to get it started.

I think, of all the composts that are being produced in the years to come, every single one should be produced and analyzed separately and get permission separately. There should be no mixing between one and the other in order to bring a quality compost on the market.

I also included in the definition that any manure or organic material containing nutrients should be produced from organic waste material. We like to distinguish this from peat production as well. I’m sure that the minister knows, because he has this problem right in his backyard with the Alfred bog. The Alfred bog is heavily exploited because peat is in high demand in Ontario. There is only one way for him to get out of the system: by including in the definition of “manure,” or whatever you want to call it here in the act, that it is actually all organic waste materials containing nutrients. Peat, peat moss and peat-related products are not considered to be waste materials.

That’s it, Madam Chair.

1440

**The Acting Chair (Mrs Tina Molinari):** Thank you very much, Mr Langenberg. You’ve left approximately one minute for the members to ask questions. Is there anyone who has a pressing question to ask the presenter?

**Mr Peters:** On the last page of your presentation, where you speak of an independent certification institute to be created, is this an initiative that should come from OMAFRA?

**Mr Langenberg:** Yes. To be honest with you, sir, I have the feeling from the Canadian composting industry that there’s a need for an independent certification organization. As you know, compost is produced across the country, so probably every province should have its own. If I take Ontario as an example, this independent certification organization or institution or whatever you call it should consist of one member of one of the four soil-testing labs, one member of a university or college and two members from the processing industry who are qualified and understand the processing of organic waste. It should come out of OMAFRA directions.

**The Acting Chair:** Thank you very much for your presentation and for taking the time to come out today to share it with the committee.



FRONTENAC FEDERATION  
OF AGRICULTURE

**The Acting Chair:** Our next presenter is from the Frontenac Federation of Agriculture, if you could please begin by stating your name for the record.

**Mr John Williamson:** I'm John Williamson. Honourable committee members, thank you for the opportunity to address you today on the topic of Bill 81, the Nutrient Management Act, 2001.

I shall not discuss the many accomplishments of Ontario agriculture and our excellent track record in protecting the environment that farmers have done, at our cost, while producing the safest food in the world, as many of my colleagues have already done so. I shall take a slightly different approach.

I shall start by acknowledging the fact that the Ontario Federation of Agriculture, OFA, supported the legislative approach for Ontario, to a large extent to ensure a level playing field across all municipalities. This proposed legislation appears to do just that. However, I fear that it will level many family farms in the process.

Why do I say that? I say that because at one extreme this legislation, when regulations are enacted, could be one of the most draconian pieces of legislation on the books. The powers of search and seizure exceed the powers the RCMP have while searching for evidence on the perpetrators of last week's terrorist attack. No warrants are required, no thoughtful second opinion such as a justice of the peace or a judge, but in most cases the provincial officers act on their own. They only require reasonable grounds—reasonable to what level in a law-abiding rural community? This power is valid only in daylight unless "work is being carried out on the land or at the premises": section 12(3). I would suggest that on a livestock farm that is 24 hours a day, when you consider that regulations may cover buildings where livestock is kept or places where livestock is kept outside: section 6(c). I question whether some of these sections would withstand a charter challenge.

I find sections 7 and 8 confusing. I think they say that a director who issues an order etc shall serve written notice, and a person who receives the notice may require a hearing. However, if a person has been advised that the order has been issued, the person may not require a hearing. I couldn't follow the flow of thought of those two sections.

Subsection 12(4) seems too broad. The word "impairment" by dictionary definition catches everything and is open to interpretation by each officer. Manure on a dandelion could be impairment of the natural environment to some people.

Subsection 12(5) would allow for the seizure of a farm's environmental farm plan which had been confidential and personal previously, and guaranteed to be such by the government. Poor crop prices or a lack of government assistance will likely not be a due diligence defence if a shortcoming has been identified in the plan.

Subsection 6(d) will allow for regulations restricting the access of farm animals to water and watercourses, yet without that access, I would have lost my cattle during the ice storm of 1998.

Section 5 outlines the potential for numerous regulations, and virtually all will require expenditures. Both the act and the government have been silent on assistance to meet these requirements. Our neighbours in Quebec can receive up to 90% assistance to make environmental changes. What does that do to a level playing field?

Subsection 56(5) holds all the government officers, workers, directors and committees free from liability for any act done in good faith, yet the entire act is about holding farmers accountable for something that is virtually always done in good faith. As one of our better farmers said to me, "This act isn't about farmers. We are now criminals."

Subsection 56(2) on delegation holds the government exempt from liability for anything done by a delegate. The same standard is not held for farmers who may delegate nutrient management to a third party. Much of this is coming as a result of the tragedy at Walkerton, but nothing here would have prevented that from happening. Everyone is still going to have to do their job correctly.

The OFA has requested a level playing field to some extent because of the rush by municipalities to limit "factory farms," but by throwing such a heavy blanket, the act catches everyone without defining a lower limit. There is already a set of environmental laws out there and I feel that there should be a lower limit of livestock units or acres to where this new legislation applies. This is possible under subsection 58(e).

What have we done over the last 150 years that has been so terrible? If we have laid waste the countryside, why the rush of "rurbanites" trying to buy lots on and around farms? Remember the average age of farmers in Ontario is 58. Because of cost, this legislation is going to speed up the exodus and ultimately hurt the rural municipalities and farm-related businesses.

Subsection 5(2)(z) re local committees has a lot of merit, and we have already started to meet with adjacent counties to talk about this concept. We feel that by combining counties, neighbours won't be dealing with neighbours. In addition, any committee should consist of at least 50% farmers.

I shall leave you with a little story. On the farm where I played and worked as a kid, there was a small stream that we and the cows would wade into and get wet. Today, even without this legislation, the cows would be forbidden. This legislation would likely require a buffer. However, we need not worry, as it is under 50 feet of dirt and the corporate headquarters of Magna International Inc. Which one changed the environment?

Thank you for your time. If this legislation is passed, I trust we shall have the same opportunity to review and comment on the regulations. I feel it would be of benefit if this act was to be referred to committee before approval to give a second review, because with all the



other environmental legislation that exists, this proposal is overkill. Remember, we are farmers trying to raise families and to produce safe food, not criminals. We and our families live on the land, and our track record for lack of nutrient-caused illnesses is excellent.

**1450**

**The Acting Chair:** We have just a little over two minutes for each caucus. I'll begin with in the rotation with the PC caucus.

**Mr Galt:** Thanks for the presentation and the level of concern you're expressing here. I was away from the committee Thursday, Friday and this morning, just getting back with it at noon today, and I'm finding this afternoon I'm hearing a lot more concern than I was last week about the content of the legislation. It's been supported by the Ontario Federation of Agriculture and other agricultural leaders, and we've gone through extensive consultation, trying to arrive at a reasonable level where farmers can continue to farm and their neighbours can enjoy their property to a reasonable level, recognizing they may have to smell some odours a few days of the year, maybe even a few weeks, but not 365 days of the year.

One of the things that has evolved us to this has not been the majority of farmers; it has been a small percent, as I'm quite sure you're aware. Going back to January 2000 when Mr Barrett and I were on the road with this, we were in Guelph and an individual came in from Goderich on a most gorgeous January afternoon, the sun out like today, and he came by where he saw was five or six farmers spreading manure on the snow. We all know—maybe not all; most of us know—that very few nutrients are going to end up in the soil with that kind of disposal, because that's certainly not putting nutrients on the land. At the time I was embarrassed to admit that Dad and I, in the early 1940s and 1950s, put manure on the snow, and I was quite surprised to find out when we were involved in this just how many people are still doing that.

There is a need for this. I don't think there's too much question for legislation of some sort. One of the things we're doing as a government—and I believe this is the fourth piece of legislation—is we're going out after first reading. After first reading, it's more like we're working on a white paper. After second reading, the parties get entrenched, and it's more of a government position, and it's going to go through. But it's certainly a signal of flexibility by coming out after first reading.

So the comments you're making—I don't really have a question; I was just kind of responding to you. Certainly, it will be taken under advisement, and I'm sure you'll see a fair number of changes as we move into second reading. Again, thank you for the presentation.

**Mr Williamson:** Thank you. As I say, I'm responding to some extent to what-ifs, because we haven't got the regulations in front of us. But that whole section that states what types of regulations can be made, they're all going to require some type of investment by farmers, basically, whether it be a certification, a course, new equipment, storage, buildings, the whole thing.

I appreciate your comment that they used to spread it on the snow; everybody did. Back when everybody had horses, etc, if you didn't work 365 days a year—we didn't have the equipment we've got today—you couldn't get the job done.

**Mr Cleary:** Thank you for your presentation. You had mentioned in your brief that you would like to see 50% of the committee set-up be farmers. What would the balance be?

**Mr Williamson:** I think you'd have to change, depending on the community. I think, depending where you are, the structure may change substantially if you're trying to be reflective of the local community, whether it be a conservation authority, an environmental group, just general urban or "rurban" people or municipal councils. I don't have a problem either way, but I think if you're trying to go and be a peer-type of thing, if you counsel other farmers on what they should or shouldn't do, I think 50% of the committee should be farmers.

**Mr Cleary:** OK. Once this part of this legislation goes through, what do you see as the biggest one or two issues?

**Mr Williamson:** One is cost. Whatever happens coming down the pipe on these regulations, it's going to cost a lot for farmers to jump through these hoops. As I said earlier, whether it's certification, whether it's changes to where you hold your cattle, whether it's buildings, whether it's storage, the whole thing, it's going to be a major cost, and the money isn't there in agriculture today to do it.

I'd look at Quebec. I was over there last week reviewing the plan of a gentleman who has to build a new facility for the winter holding of his cattle, and he can get 90% of it covered by a grant from the provincial government.

**Mr Bisson:** My question, I guess, is fairly straightforward. I'm not from the farming community; I'm out of northern Ontario—mining, lumber. If it ends up the regulations are as tough as some people fear they might be, quantify for me what it means for you as a farmer. What kinds of things would you have to do and how much would it cost? You made the comment that it has the potential of shutting down a number of family farms. I'm just trying to get a sense of how.

**Mr Williamson:** I suspect I'm done. I have my home farm of 95 acres, I've got two streams, 13 springs and a third of a mile of shoreline. I'm on rolling topography, so by the time I buffer all that—I have them fenced currently, but the way I read this legislation, it won't be adequate—I'll probably have to stand my cows on top of each other. That's what it means today. If every beef/cow/calf guy has to build a facility for storage of manure, there's a major cost there.

**Mr Bisson:** So, if I understand, you're saying it's not even the worst-case scenario that could shut you down; as you read it, it could shut you down?

**Mr Williamson:** To some—yes. As I read it, I see regulations coming in most of those sections. How far they go or how wide is a guess. The Fisheries Act



currently has sections that deal with the present situation and that's where I fenced it before. I spent 30 years in natural resource law enforcement and I read it with that background as well as agriculture.

**Mr Bisson:** And it's the same for most people in the same way? For most farmers?

**Mr Williamson:** A lot of the bigger places, like dairy farms, have storage facilities for manure now. But if you look at cow/calf operators, most of them operate with cattle running at large during the winter. They're not confined to buildings. They're much healthier if they're out. So if you're getting into a space where you have to store manure etc, then you're into major costs.

**Mr Bisson:** Is it wrong for me assume that the smaller the farm, the more difficult it's going to be? The large agri-farms, the corporate farms, would it be easier for them to comply because of the land base? Is that what you're getting at?

**Mr Williamson:** No. I don't think it's the land base as much. I think they're going to have some difficulty as well and they're going to have some major costs, but the smaller guy—

**Mr Bisson:** They can't afford it.

**Mr Williamson:** —just isn't going to do it. Plus, with many of the small cow/calf operators the average age of farmers is 58, so there are a lot of them in their 60s and 70s and they're not going to make that commitment, and they've farmed all their lives.

**The Acting Chair:** Thank you, Mr Williamson, for sharing your views with us this afternoon.

#### DUNDAS SOIL AND CROP IMPROVEMENT ASSOCIATION

**The Acting Chair:** Our next presenter is the Dundas Soil and Crop Improvement Association. If you would please begin by giving your name for the record.

**Mr Robert Byvelds:** Good afternoon. My name is Robert Byvelds. I'm here on behalf of the Dundas Soil and Crop Improvement Association.

In January 2000 we took part in the consultation process on intensive livestock operations. We supported nutrient management planning with third party reviews. Today I wish to make some comments on the Nutrient Management Act, 2001.

Although the act is now just the first step to allow the province to create and implement standards and regulations, farmers in Ontario must be included in the next steps. Farmers must have input in the actual numbers, calculations and ratios. Farmers must also be consulted to ensure the fairness and accuracy of farm operation sizes. Farmers are well represented with experienced, knowledgeable people to contribute to the new legislation.

Also, the Nutrient Management Act does not include any monetary incentive or compensation. Newly constructed barns or recently expanded farms have included manure and waste storage to accommodate the livestock. However, many farms in Ontario may require

significant capital to comply with the new regulations. Investments in the tens of thousands of dollars will be necessary. Without help financially or without tax breaks, the added investment would force many Ontario farms out of business. Most competing provinces have such programs with grants.

I also feel that the Nutrient Management Act should encourage research and new technologies and give staff and financial support that would work with farmers better utilizing nutrients to avoid any further nutrient-related problems. The Ontario government should not be cutting research money, especially to the University of Guelph's Kemptville campus.

In closing, I would like to say that in order for Bill 81 to proceed to the Legislature, farmer input is needed, firstly, to ensure that new standards are reasonable and practical; secondly, to help farmers adapt to new changes; and thirdly, to encourage nutrient users to try new technologies.

1500

**The Acting Chair:** We have about four minutes for each caucus member. In the rotation, we'll begin with the Liberals.

**Mr Peters:** Your comment on research and new technologies is certainly something we've heard consistently. Do you feel that we adequately understand right now from a soil standpoint, with the applications that are taking place, be it manure or septage or biosolids, the science well enough to know what we are doing, or is this what you're getting at as far as further research?

**Mr Byvelds:** I think we have much more to learn about application methods, uptakes. There's so much more to learn and so many experiments and field trials to do. I think we're just beginning. There's lots of research that could be done and these nutrients could be used that much more effectively. We just need to learn.

**Mr Peters:** John's got a question.

**Mr Cleary:** I had asked earlier about the makeup of a committee to oversee this. How do you feel that should be made up? Who should form the committee?

**Mr Byvelds:** Definitely farmers are well represented. We have very knowledgeable people who could provide reasonable and practical numbers. I think the farmers should represent at least 50% of such a committee.

**Mr Cleary:** And municipal people?

**Mr Byvelds:** Municipal people are certainly not as educated or as familiar with anything like this, although the municipalities are also contributing nutrients—maybe 25% and the rest being OMAFRA staff.

**Mr Cleary:** Would you support this legislation, if you were a member of the Ontario Legislature, without seeing the regulations?

**Mr Byvelds:** To me, when I first read it, it's like signing a blank cheque. I'm worried. I'm quite concerned that the numbers coming down are—the term we used was somebody in Toronto just putting these numbers together, whether they're using a dart board, or where they're coming from.



**Mr DeFaria:** On a point of order, Madam Chair: I think it's unfair to ask presenters whether they would support the legislation without seeing regulations. We vote on legislation all the time without seeing the regulations because regulations—

**The Acting Chair:** Mr DeFaria, that's not a point of order. The speaker is asking the presenter for an opinion on whether they would support the legislation, so I think it's duly appropriate.

**Mr DeFaria:** The point I wanted to make is that usually regulations come after the legislation is passed. All members know that we vote on the legislation without knowing the regulations.

**Mr Cleary:** I understand that. What do you think one of the biggest issues is in this piece of legislation?

**Mr Byvelds:** You'll be forcing farmers to make changes that they just can't afford; I'm not saying can't justify, but without any grants or something, you're asking the farmer—I can speak from our own experience—to invest \$60,000 in manure storage and he maybe just can't cash-flow that right now.

**Mr Cleary:** I may be asking a lot of the same questions to different presenters, but we have Hansard here, you know, and it's in there forever, and we like to look at it at a future date, which I often do, to see what presenters said at one time if things don't go exactly the way that they would like it. But anyway, I appreciate your comments. I know you said that one of the biggest issues was cost.

**Mr Bisson:** Just to follow up the point that Mr Cleary made, that I made originally, which is the question of regulation, often we vote on legislation—Mr DeFaria is right—and the regulations come after. But it's not always the case. A number of times, just to be clear here, we as critics will get a piece of legislation at second reading complete with a compendium that includes all the regulations. We've seen that on a number of occasions. So the government does have the ability to prepare the regulations, and I think this is one of these cases. This is a bit of a non-partisan committee set-up that we have here when we go to first reading, and I think there are some legitimate concerns being raised.

On behalf of our caucus, I'm just saying to the government, after they go back at the end of these hearings, that it would be good to at least get a sense of where you're going with the regulations. I think we all—the farm community, the municipalities, everybody—generally support what you're trying to do here, but if the regulations aren't right—and I think we all understand that—it could have far-reaching implications that could put people out of business. I don't think you want to do that and I certainly know that we don't want to do that. So on behalf of those people affected, I would hope that you would be able to come forward with an explanation of what's going to be in the regulations and what the intent is going to be, because to vote otherwise is going to be blind.

The question I have for you has to do with the money issue, because what I'm hearing people say is they've got

similar legislation they've put in place in Quebec and the government there has been proactive and basically provided some financial incentives for the farm community to be able to adhere to the new legislation, including whatever regulations they've got.

I heard Mr Galt earlier make a comment that it's not very likely that's going to happen. I guess I've got to ask the question: if you don't get any financial assistance, would you be voting for this bill? I come back to the question I asked earlier. I'm nervous voting for this bill at second reading without the regulations. I'm a little bit nervous voting for this bill knowing there's a financial implication for the farm community and there's no compensation coming your way to help you adhere to the new legislation. So on the second point, if you don't have a financial package tied to this, a tax credit program or a straight-up grant or whatever it might be, or, as some people suggested, what they call hypothecated taxes, like 1% of something to pay for this, would you vote for it?

**Mr Byvelds:** No, I'm not sure I could support that.

**Mr Galt:** Thanks for the presentation. There's been a lot of debate on regulations and when they come out and when they don't come out. Certainly there have been presentations around the province by staff giving general overviews of general direction. We're not exactly operating in a void, as has been suggested here. We've been working on this, as I'm sure you heard from the audience, for approximately two years, a green paper being developed in the fall of 1999 which was released just before Christmas of that year and then working from there to develop a paper.

Whether the regulations are totally in place as this bill goes through or not, two weeks down the road or two years down the road, whatever, whichever party happens to be in government can bring in new regulations based on the legislation that's there. So just because it's there at the time that it goes through third reading and receives royal assent etc doesn't mean it's etched in stone and going to stay there. That's part of why the regulations are written, rather than in the act. If you put it in the act it's very difficult to change, unless you go through another bill such as this, whereas if it's in regulations, cabinet has the ability to change it with the signature of the Lieutenant Governor, leaving some flexibility for those kinds of activities. I just wanted to give you that background so you'd have some feeling. It's always a struggle with absolutely every bill that I've ever been involved in how much should be in the bill to sort of semi-etch it in stone and how much should be left out in regulations so there's some flexibility down the road.

You mentioned about consultation. I ran through quickly some of the consultation that's been going on out there and some of the work that's headed in the direction as a result of that consultation. Where should we be going from here as we work on the regulations? Should there be more tours around the province? Should we be sitting down with stakeholders, different heads of federations and milk marketing boards? How should we go about more consultation?



**Mr Byvelds:** I think that's exactly where we should be going. Each farm organization has its members who are on the environment committee or such committees. Basically, just sit down with them and negotiate.

1510

**Mr Galt:** So rather than hold a lot of public meetings all over the province, more concentrated meetings with the stakeholders would be the way to tidy up regulations? Is that what I'm hearing from you?

**Mr Byvelds:** That would be the next step.

**Mr Galt:** The other one I would like to ask you, if I may, Madam Chair, has to do with the help, and I asked this earlier. What kind of form—and the government has not said no at this point. Would it be actual dollars in grants? There is a healthy futures program that now has recognized some organizations with dollars to assist in this general direction, and it's certainly there for looking after our water. How would you see it: tax breaks, tax—

**Mr Byvelds:** I understand that actual money to farmers is tough. It would be tough to get that money. The province beside us gets, from what I've heard, 90%. Sure, that would be great. That's what we're asking for. I wouldn't settle for anything less than some sort of tax break or accelerated depreciation—nothing less than that.

**The Acting Chair:** Thank you, Mr Byvelds, for your presentation this afternoon and for allowing time for the committee to enter into some questions and discussion with you. It was very helpful.

#### RENFREW COUNTY AGRICULTURAL ADVISORY LEADERSHIP COMMITTEE

**The Acting Chair:** Our next presenters are the Renfrew county agricultural committee. If you could please begin by stating your names for the purpose of Hansard, and then you can begin your presentation whenever you're ready.

**Mr Ray Pender:** I'm Ray Pender, chairman of the Renfrew county leadership advisory committee.

**Mr Mac Coughlin:** I'm Mac Coughlin. My title is chairman of the environmental farmland committee for the county. I have other titles too, but that's really what I'm here for today.

**Mr Jim Hutton:** Jim Hutton, manager of planning services for the county of Renfrew.

**Mr Pender:** Madam Chair, ladies and gentlemen of the committee, the Renfrew County Agricultural Advisory Leadership Committee appreciates this opportunity to present comments on Bill 81 on behalf of the agricultural organizations of Renfrew county.

We will be the first to admit that agriculture is a contributor to problems in the environment but object to the fact that we are targeted as the main culprit. It should be noted that most of Ontario farmers are currently operating, or trying to operate, in a friendly, environmental fashion. Only about 3% of the population of the province takes the responsibility of making sure there is clean water for all.

As a whole, the farming community of Renfrew county agrees there is the need of a legislative framework for nutrient management and therefore supports many aspects of Bill 81. However, we do have some concerns with Bill 81 as presented.

**Administration:** the agricultural organizations of Renfrew county approve of the government of Ontario and their Bill 81, the Nutrient Management Act. We do have concerns, the first being that we feel the Ministry of Agriculture, Food and Rural Affairs should be the lead ministry, and that the knowledge of the Ministry of the Environment be established as a special unit within OMAFRA. We feel that consistency is needed all the way around, from the large agricultural operation to the very small one.

We would also like to see that sufficient funds are made available to farmers to meet the requirements of the act. Farmers also want to see simpler Nutrient Management Workbooks if they must be completed for their farms.

The agricultural organizations of Renfrew county would like to see an economic impact study done to calculate the total cost of the new standards this legislation would have on the agricultural industry of the province. To make the Nutrient Management Act work, we must make sure that the environment and the agricultural industry remain viable.

**Education:** we feel that an essential component to the success of the Nutrient Management Act is the education of farmers. With the ending of the environmental farm plan program at the end of April 2002 we would like to see OMAFRA put funding in place to hold nutrient management plan workshops. In this meeting today, how many farmers would know there is already a Nutrient Management Workbook available through their government information offices? And to go one step further, how many know that there is available software as well, to be used on the computer?

Farmers must understand and feel comfortable with what they are doing in completing a nutrient management plan and know that they have the support of the government. The length of time planned to make all farms compliant to the act should be extended. It may not be financially feasible for many large operations to meet all requirements within three years. The bigger the operation, the higher the costs.

**Economic impact:** as farmers, we cannot help but wonder what impact the Nutrient Management Act will have on the agricultural industry. With the average age of farmers in Ontario being 58 years, we may see many of them exit the agricultural industry in fear of Bill 81. The Nutrient Management Act may indirectly affect agricultural land values, which in turn affect the assessment of municipalities in Ontario. We may also see an increase in family generation and land and business transfers.

The farmers, through the Nutrient Management Act, will face many financial burdens. Because of this, we again stress the need for financial assistance for them to stay viable. Society as a whole will benefit from this



financial help, because when the farmers protect the environment, everyone benefits.

With the implementation of the Nutrient Management Act, we encourage the updating of the provincial land use policy to reflect the changes that will occur to farmland; for example, MDS and individual lot separations on farms.

Finance: we urge the Ministry of Agriculture, Food and Rural Affairs to have money set aside for the implementation of this Nutrient Management Act. We have seen input costs rise year after year on the farm and the value of the products at the farm gate stay the same or go down.

With this in mind, many farmers are going to need financial assistance to meet the requirements of the act. There is a lot of talk about imposing penalties if a situation is not corrected in a reasonable length of time, but, again, no mention of compensation or financial help to do what has to be done to make a farm environmentally friendly. We feel that the agricultural industry deserves the same financial assistance the urban communities receive to keep them within environmental guidelines.

Inspection and enforcement: as an agricultural county we, the farmers of Renfrew county, feel that it is acceptable to hold random inspections on farms and to be fair to farmers who still have items to address where nutrient management is involved. After a few warnings and time frames being set for the completion of items set down in the act, we feel that the ministry is within their rights to set monetary penalties.

We stress that the passing of Bill 81 cover only items under the Nutrient Management Act and not be used to address situations that could possibly fall under the Environmental Protection Act. We must remember that the Nutrient Management Act is a preventive way to protect the environment in the future.

Regulations and objections: the agricultural industry believes that the managing of nutrients applied to the land is a good thing. However, we must keep in mind the environmental and economic implications that go with it. We would like to see a committee set up of our peers, those with registered farm businesses, to work with the government in establishing Bill 81 and indicate that the Lieutenant Governor "shall," rather than "may," provide for their establishment.

Our objection to Bill 81 is simple: this bill does not address the environmental pitfalls of our urban neighbours. Some of the issues yet to be addressed by the government are storm sewers, which gather pollutants from streets and lawns, fertilizer and lawn herbicides and droppings from animals. Another area not covered is the size of boat motors and boats on watercourses throughout the province, and the amounts of nutrients that are applied to golf courses to keep them up to par. All these things contribute to groundwater pollution.

Closing comments: we agree with the government that there is a need for the Nutrient Management Act. Before the implementation of the act, we encourage the

government to check the economic impact the act could have on agriculture and be prepared to offer workshops on nutrient management plans. We also recommend that a funding program be in place at the same time that nutrient management regulations are introduced.

I'd like at this time to ask Jim Hutton to make some further comments, please.

1520

**Mr Hutton:** On behalf of the county of Renfrew, I'd like to thank the committee for this opportunity to speak to you today.

Agriculture represents a very important component of the economy of the county of Renfrew. We've been working hard with the Renfrew county leadership committee to maximize the economic potential of the agriculture sector in the county of Renfrew, and also to make the local and county politicians aware of some of the concerns of the agricultural industry.

There are several characteristics regarding agriculture that are important for consideration in the county of Renfrew:

—The agriculture industry creates 4,257 jobs, which represents almost 10% of our labour force.

—The county is the largest geographic county in Ontario. However, we're dominated by the topography of the Canadian Shield and only 12% of our land base is class 2 or 3 lands. We have no class 1 lands.

—Our heat units are also lower than many other areas of Ontario, so it presents some limitations for field cropping.

—Farms in the county of Renfrew tend to be smaller and farm gate sales tend to be lower than in other areas of Ontario and even eastern Ontario. Therefore, farms in the county have more difficulties in responding to economic conditions than in other areas in the province.

The county of Renfrew, when the Nutrient Management Act was put out to the public, consulted with agricultural organizations in the county and local and county politicians. We have four points I'd like to make the committee aware of:

(1) Farming for many farmers in the county would not be a viable option if not for off-farm income to supplement farming. If implemented in a costly and complex manner, some farmers may opt to cease their farming operation, effectively being regulated out of farming. Again, in the county of Renfrew almost 40% of farmers are over the age of 55. This is higher than in eastern Ontario and the Ontario average by about 35%. So it could have a greater impact on the farmers in the county of Renfrew.

(2) The politicians, agricultural organizations and farmers in the county understand and are supportive of the need to practise agriculture in an environmentally responsible manner. There is a concern, however, that the requirements of the Nutrient Management Act and its regulations may make farming, particularly on a smaller scale, uneconomical.

(3) As the regulations cannot be passed until after the act is proclaimed, it is very difficult to determine the



impact of the regulations. Therefore, it's recommended that meaningful consultation should occur prior to the enactment of the regulations. This represents one of the main concerns expressed by both farmers and municipal politicians in the county of Renfrew.

(4) Over 40,000 residents in the county of Renfrew rely on septic systems for sewage disposal. Therefore, it's very important that viable alternatives to the disposal of untreated septage be developed prior to the banning of the spreading of septage within five years.

I'd just like to conclude by saying that the county of Renfrew is cognizant, and I would say supportive, of the need for environmentally responsible nutrient management policies and practices. Through this consultation process, it is hoped that the province will be able to satisfactorily address the concerns of the farming community, the municipality and the residents of Ontario with regard to nutrient management. Again I'd like to emphasize that meaningful consultation should occur with regard to the regulations prior to their enactment.

Thanks very much.

**The Chair:** Thank you, sir. Does that conclude your presentation?

**Mr Pender:** That concludes our presentation.

**The Chair:** That's great. That leaves us with two minutes for questions from each party. I'll go in rotation and, once we conclude that, I'm also asking the committee members to take an opportunity to put forward any concluding remarks.

We now have questions for the Renfrew county agriculture committee. We'll begin with the Liberals.

**Mr Conway:** Gentlemen, it's good to see you. Mac, that has got to be the fanciest pair of suspenders ever to come out of Ross township.

Let me just ask all of you but, Ray and Jim, I guess it's part of your presentations. Ray, on page 1 under administration you make the point that others have made here as well: "We feel consistency is needed all the way around, from the large agricultural operations to the very small one." Then you, Jim, in your presentation point out what I've certainly heard at home as well: a great concern from a lot of these small, almost in some cases marginal, beef producers up on the fringe of the Shield who were really worried about what any kind of increased restrictions are going to mean to the economic viability of their operations. My question to you as a panel is, how do we do that? How do we on the one hand, Ray, get the consistency that you call for between large and small and not strangle or just render unviable a lot of the 55% that Jim speaks of in his presentation?

**Mr Pender:** I guess I'm saying that we all have to comply, but probably at different levels, because of the different types of operations we run.

**Mr Conway:** Let's take that beef operation, because that's what a lot of what our farming activity is, particularly in some of the areas that we're perhaps most concerned about. We had a presentation, you may have heard, from one of the sheep producers. He made a very interesting comment—I don't know anything about sheep

operations—about sheep and water. I think of much of the sort of Shield country in southeastern Ontario. You've got cattle operations; you've got fast-moving rivers. Not very far away are creeks feeding into rivers that then go into some of our larger urban communities. What's practical? We talk here about regulations, but let's use that as just a quick example. What would you recommend on the basis of what your committee has heard is a practical thing to do in the upper Ottawa Valley, where you've got some person who's working off-farm but has 25 cattle roaming through the ranch, as we say, but the ranch has some creeks and maybe a river not very far away?

**Mr Coughlin:** Some of those small operations aren't any great threat to the environment. Their acreage is large enough and the cattle are spread over it. But from an environmental farm plan standpoint, we tell people to go through the workshops in those small beef farms. For a small amount of money, a concrete base with a tapered edge that will hold a small amount of manure will be adequate for them. But the dairy farm—

**Mr Conway:** But what about the fencing in the case of the beef guy or woman? What do we do about the fencing issue around watercourses?

**Mr Coughlin:** We'd just say, "Call the truck." We can't do it.

**Mr Conway:** And the dairy?

**Mr Coughlin:** Most dairy farms now are confined the year round, but they need terrifically big storages. For the ones that come through the EFP, it costs about \$1,000 a cow. Sixty cows is \$60,000.

**Mr Hutton:** If I may add, Mr Conway, I think perhaps a way to enact the act and the regulations consistently would be to provide the education that the smaller farm operators need. Perhaps you could set up centres of excellence, for lack of a better term right now, where farmers can go to get the assistance with the nutrient management plans, understand the regulations, perhaps even have professionals on staff, funding perhaps through the private sector, municipal and provincial governments, where they can talk to professional people who may have a template for a nutrient management plan. I think that would be a big assistance to particularly the smaller farmers who perhaps cannot be able to afford the professionals and the consultants who may be required to complete the nutrient management plans.

**Mr Coughlin:** Can I make a comment? The previous presenter talked about tax credits. Eighty per cent of the farmers from Renfrew county would say, "What taxes?" What are you going to base that tax credit on? There is no tax to base it on.

**The Chair:** Mr Bisson, questions?

**Mr Bisson:** No, that's fine. It was quite clear.

**Mr Galt:** I had one question, just as it relates to tax credits. A tax credit is something you get back, whether you pay any taxes or not. You have to have taxes to be able to get a tax deduction. There is a difference.

**Mr Coughlin:** There is a difference?

**Mr Galt:** Yes.



**Mr Bisson:** But you have to file taxes.

**Mr Galt:** Yes, you have to file to get it, of course.

The question I had goes back to the second paragraph: "Only about 3% of the population of the province takes the responsibility of making sure that there is clean water for all." We talk about 3% of the population as living on farms. Maybe only about 1% really farm. Are you referring to farmers in that quote?

**Mr Pender:** Yes.

**Mr Galt:** OK. You're not talking about people looking after water in general.

**Mr Pender:** No. I should have been more specific there, I guess, referring to farmers as a group.

**Mr Galt:** Specifically the farm population.

**Mr Pender:** Yes.

**Mr Galt:** They have the land where the water falls and it's collected from that land and sooner or later it ends up in wells or in water treatment plants etc.

**Mr Pender:** Yes.

1530

**Mrs Munro:** I want to come back to the issue around education, because I do think that that is a paramount piece of any initiation of legislation. There's been some discussion about the appropriate lead-in time, and I believe you made some reference to workbooks. I'm sorry, it might have been the previous—

**Mr Pender:** Yes.

**Mrs Munro:** Yes. I wonder if you could give us a sense of what you think would be an appropriate timeline, given the kind of concerns over education that you've identified here.

**Mr Pender:** How long has the EFP been in place now?

**Mr Coughlin:** Nine years.

**Mr Pender:** It has taken that long to get through most of the farm population, at least in our county. It's very hard to get the farm population notified and motivated to come and take a short course, to work on the books to complete a nutrient management plan. I don't have an answer for that. It's a very slow process and it's going to take time.

**Mr Coughlin:** Farmers in Renfrew county are outnumbered by cottage owners by about four to one. As farmers, we wonder how many of them have an approved septic system. A lot of those cottages have been converted to permanent homes. I think that we are being discriminated against.

**The Chair:** Thank you, Mrs Munro. On behalf of the committee, I wish to thank the Renfrew county committee. Thank you for this information for the committee.

That wraps up the delegations. This is day 7 of the hearings. We have two more days to go later this week. I would suggest to the committee that this is an issue that needs resolution. I guess we will take a bit of a breather at day 7 and I would ask each party for any summary remarks on this process. It's a process that's been going on for close to two years, it was indicated by Dr Galt.

We will start with the Liberal Party and go in rotation.

**Mr Conway:** Because I'm a visitor here, just a couple of things: I congratulate the Chair and the staff. It seems to be a very well run and very efficient exercise. I thank you for the opportunity to sit in today.

I just want to underscore the point that I made a couple of times earlier today—and my constituents just left. I really do think that this question about rural septage is a big issue. Quite apart from Bill 81, there are activities occurring out there that are going to have very significant impacts, not just on farmers but on people living in these rural communities.

At some point, whether it's part of this exercise or some collateral exercise, I think the Legislature had better sit down and find out, for example, with the approaching winter, what is actually going to happen. I heard this summer there was some investigative work being done out of the London office of the Ministry of the Environment. I was stunned by what was reported on CBC Radio news about six weeks ago as to what they were finding.

My friends have just made the point. I've got 40,000 people, that's almost 40% of my constituents—and if you get into Parry Sound, Muskoka, North Addington, Haliburton, rural Lanark-Hastings, the picture doesn't change a great deal. One of the questions I would have is the parity question. Are we expecting farmers directly to do things that we're not expecting other people to do? At any rate, I think it's a very significant issue.

As a long-time member of the Legislature with a very keen interest in this issue, I think a lot of very good work has been done by many of you on this committee, and I acknowledge the work done by Messrs Galt and Barrett. I think parts of this, if we're not careful, are really going to give us a lot of difficulty very quickly.

That's the only advice I would have. Again, thank you for allowing me to be here.

**The Chair:** I will mention too that the mandate of these hearings is not only agricultural manure; it deals with paper biosolids, as we heard today, municipal biosolids, municipal sludge and also septage. We're searching for a very comprehensive but balanced approach to this issue.

**Mr Peters:** I appreciate the opportunity because it's the first time I've sat on a traveling committee. We somehow need to find a better way to utilize the time, because the questions, as you've rightfully pointed out, are the best opportunity for us.

Having sat in on all seven hearings now, like yourself, I think one of the things we need to do is to better portray agriculture in the media. One of the things I've certainly seen, and I think the last group of presenters just reiterated it, is that agriculture seems to get painted as the culprit for the pollution.

All I can do is relate a personal experience when I was mayor of St Thomas. Every summer the reeve of Port Stanley would call up and blast us for the bypasses from our pollution control plant. The beaches were posted, and nobody could swim in Port Stanley. So we studied our watershed and what we came up with—and I think we



need to get the message out—is that we have a collective responsibility. It is the farmers, it is the cities with their pollution control plants and their bypasses and their storm water runoffs, it is the spreading of septage in the fields, it's septic systems that are falling apart, it's boaters, it's animals. That's been lost in the mainstream media, and I don't know how we fix that.

A couple of other common themes we've heard that need to be addressed: certainly the question of money, the capital dollars that are going to be required; the research and science and investment in facilities like this one where we are today, in our agricultural colleges. It's come through really loud and clear that we need a better understanding of what's going on out there.

The other thing we need to address is the differences across this province. In visiting seven municipalities I've certainly witnessed that the landscape, both visual and the natural environment, whether it's soil, water or climate, and what's below the ground, are different, and we need to take that into account.

The last part I think we all need to recognize is the regulations. I know there are procedural issues we need to deal with, but I just want to get on the record that it's important that we do consult. And if we're going to consult, we've got to make sure we do it in a timely fashion. I want to use an example of something right now that really troubles me: "Ontario reviews meat inspection system and regulations." It's dated September 12. But do you know when the hearings started? September 11. I think it's of utmost importance that we let people know well in advance. If we're going to give them that opportunity, we can't just send something out on September 12 for something that started on September 11 to deal with meat inspection. For those of you in this area, if you're interested, they're coming to Kemptville. They're at Alfred College on the 24th, and they're here on the 24th as well. So you may want to have some input to some real changes here.

So on the regulations, Mr Chair, I think everything in your power that you can do to ensure public consultation is most important.

**The Chair:** Mr Bisson, I recognize you were doing other things last week.

**Mr Bisson:** Yes. First of all, like Mr Conway, this is not my regular committee. I'm subbing for Marilyn, who would normally do this one.

Just a couple of things for people to understand: in fairness to the government members, this is a consultative process, a bill that's been put forward at first reading. We don't normally do that. In fact, we don't normally travel committees of the Legislature at all any more. Normally a bill is passed fairly quickly, and there is not very much chance to get into these types of forums, which I think are very useful.

Clearly Mr Galt and Mr Barrett tried to respond to the issue of how we deal with nutrient management in a positive and progressive way, and I think we can all agree on that. I think the farm community agrees and most people who came here agree with the general

direction. But in the spirit of understanding that this is somewhat non-partisan, I would ask the government to do what they can in order to come back with—if you don't at least come back with the full regulations, at least that we understand what the intent of the regulations is going to be. There's no reason why you can't come with the regulations. That could be done.

A second caveat: I think we need to take very seriously what has been said by pretty well everybody who has come here today. When developing those regulations, it has to be done in consultation with the farm community, and I think you hear that. So that would be one thing.

I would be willing to support this at second reading. I originally came here thinking it was like a rubber stamp and we were going to vote for this at second reading. But I'd be leery to support this at second reading if we don't clear up the regulations issue. This thing has very wide implications, as our friend Mr Conway and others pointed out: what happens in the cottage communities, what happens in small-town Ontario, what happens in the paper mills? It could really end up being something that's quite draconian, and I don't think that's the intent. So second reading support if we're able to get clarification on the regulations, or at least get them. I would prefer to see the regulations, actually, for the record. I think that would be a lot clearer, because I have seen the experience before where somebody said, "The regulations are going to meet A, B, C and D," and then you pass the legislation and find out it was X, Y and Z. So I just want to make darned sure we clarify that.

1540

The other thing is on the issue of either a tax credit program or a straight grant program. I heard Mr Galt earlier sort of indicate, "We're not too keen on providing an upfront grant system." But I think it's incumbent on us as a Legislature, as the people who are going to pass this legislation, that if we want the farm community to undertake what is going to be fairly onerous responsibilities when it comes to bearing the costs of this, we need to help them out in some kind of way. Again, I think that's something we're going to have to see in the legislation in order to get support at second reading. That's what I think I'm going to recommend.

The other thing is that—where was my last point here? Oh, that was my last point. Thank you very much.

My point to Mr Galt and Mr Barrett is this: I understand you're trying to do a good thing here. I think the general direction is OK, but our support is going to be conditional on that. We want to see the regulations up front, and we want to see some sort of assistance to the community. Without that, I think the NDP will have difficulty supporting this legislation.

**Mr Galt:** It's a smart politician who knows when he gets to his last point. I'm just teasing.

If I may make a couple comments—I think I saw a hand coming up. Maybe we shouldn't be implicating the Chair too much here. I know he was involved in some of the consultations, but he's to be neutral during these



hearings. Certainly the intent, as we were out listening a year ago January, was to arrive at that fine edge of meeting the environmental needs of the community and at the same time allowing farmers the opportunity to farm without having too many regulations and red tape, something we've been very, very opposed to.

Certainly this legislation is about covering all conditioners, all nutrients that are going to be applied to soil. If you were in my office today, you would probably be answering several calls over the spreading of sewage sludge. We can call it biosolids or whatever; it's sewage sludge that's coming out, most of it coming from that city called Toronto which, when you get a few miles away, you love to hate, particularly when they send their sewage sludge out. Manure is not the problem; it's the sewage sludge. So in the nutrient management plan, we're talking a lot more than farm manures; we're talking about all the various biosolids, whether it be from paper mills or sewage treatment plants or wherever, all those materials that are being put on to lands. Certainly I think it's interesting, even when we were consulting, how many of these lands do we include? Do we include golf courses, do we include front lawns in the cities and so on?

I get a general feeling—not today, but as we were out—that farm organizations are rather pleased that we're bringing it forward so that at least there's a bill, some regulations so they can say, "Yes, we're working within them," and have some defence from that. Maybe when we first started they were really fearful. Now, I think they are basically pleased or at least accepting of the fact it's happening. Farmers are tired—and it's been mentioned today—of being the scapegoats and being blamed. If you walk through something like what happened in Walkerton—and this is what I hear; I know the inquiry hasn't come out with its report yet. We're hearing that a farmer with an environmental farm plan—you could literally eat in the barn—actually a veterinarian operating a small beef herd, unfortunately was incriminated as having this special 0157 E coli. A flood came along and went to a well that wasn't sealed—just a lot of unfortunate circumstances—and then the water, of course, wasn't chlorinated. But here we had somebody who was trying very, very hard. This is not what most people would classify as an intensive farm.

I just want to make a couple of comments about extensive consultations going on. I think the way you're going to see some of this as it works its way through a lot of the application, particularly commercial application—there are going to be some parallels, and certainly farmers have been saying it to us, as it relates to pesticides and how some of the pesticides have been applied. I'm talking more about the commercial level, not the small farm.

Just a couple of comments: today I was a little surprised at the concern expressed, compared to what I was hearing earlier—and I'm not surprised; I was

actually more surprised at the acceptance when we first hit the road. The biggest concern consistently, and here, is finances or costs and the economic impact studies being done. Environmentalists are not totally accepting it but are certainly pleased that we're moving in the direction that we are.

I guess the other one is that we're running into—I don't know if "surprise" is quite the right word—concern over the enforcement possibly coming under the Ministry of the Environment rather than OMAFRA. There's no question there's a commitment that whoever does the enforcement will understand livestock, have that kind of background, be at least educated in that area, and we won't be having somebody totally unfamiliar with the area doing the enforcement. I can understand why people are concerned.

Biosecurity has come up on a regular basis in almost every farmer's presentation. As a veterinarian myself, I empathize completely with you and you're absolutely right: biosecurity has to be respected on each and every farm that is entered by whatever means.

**Mrs Munro:** I just wanted to follow up on a couple of the comments that Dr Galt had made.

As someone who has been involved to some extent with these hearings and with earlier discussions, and coming from a community which reflects the kinds of concern with septage as well as agricultural interests, I represent a riding where these issues are extremely important. It seems to me we have to see this as a first step, and the legislative process then as one that is enabling.

The regulatory process that I appreciate so many of you have come forward with comments on I believe is very important.

Listening to those who have talked about the need for the adequate technology and the adequate science on which to base decisions I certainly agree is essential.

I agree with those who have talked about the issue around animal units and making sure of things such as animals that are not normally confined vis-à-vis those that are normally confined.

These are all extremely hands-on kinds of issues for people in the agricultural community. You can be assured that I got the message. I want to take it back to Queen's Park and will do so.

**The Chair:** Thank you, Ms Munro. Mr Bisson, do you have a—

**Mr Bisson:** No, she actually responded to the point. I just wanted to hear the government talk about regulations, saying they would try to come back with them.

**The Chair:** Thank you, everyone. This standing committee reconvenes at 9 am in Peterborough at Parkway Place, and Friday we're on to North Bay. Today's proceedings are adjourned.

*The committee adjourned at 1548.*









## **STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY**

### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

### **Substitutions / Membres remplaçants**

Mr Gilles Bisson (Timmins-James Bay / -Timmins-Baie James ND)

Mr Sean G. Conway (Renfrew-Nipissing-Pembroke L)

Mr Doug Galt (Northumberland PC)

Mrs Julia Munro (York North / -Nord PC)

Mr Steve Peters (Elgin-Middlesex-London L)

### **Also taking part / Autres participants et participantes**

Mr John C. Cleary (Stormont-Dundas-Charlottenburgh L)

### **Clerk / Greffier**

Mr Tom Prins

### **Staff / Personnel**

Mr Avrum Fenson, research officer,

Research and Information Services



## CONTENTS

Monday 17 September 2001

<b>Nutrient Management Act, 2001, Bill 81, <i>Mr Coburn</i> / <i>Loi de 2001 sur la gestion des éléments nutritifs, projet de loi 81, M. Coburn</i> .....</b>	<b>J-399</b>
ISOfarm and associates .....	J-399
Mr Derrick Moodie	
Mr Mark Junkin	
South Nation Conservation .....	J-401
Ms Mary-Ann Wilson	
Ontario Cattlemen's Association .....	J-403
Mr Dick van der Byl	
Russell County Federation of Agriculture .....	J-406
Mr Réjean Pommainville	
Mr Klemens Weber .....	J-408
Leeds County Federation of Agriculture .....	J-410
Mr Dave McLaughlin	
Ontario Sheep Marketing Agency .....	J-413
Mr Chris Kennedy	
Brazeau Bourget Sanitation .....	J-415
M <sup>me</sup> Nicole Brazeau	
National Farmers Union, District 8 .....	J-417
Mr Barry Robinson	
Mr Ellard Powers	
Burnbrae Farms Ltd .....	J-419
Ms Mary Jean McFall	
Mr Craig Hunter	
Domtar Papers .....	J-421
Mr George Velema	
Dairy Farmers of Ontario .....	J-423
Mr Gord Coukell	
Dundas County Federation of Agriculture .....	J-425
Mr Gordon Garlough	
Mr Leo Loughlin	
Grenville Federation of Agriculture .....	J-427
Mr Adrian Wynands	
Mr William Langenberg .....	J-429
Frontenac Federation of Agriculture .....	J-431
Mr John Williamson	
Dundas Soil and Crop Improvement Association .....	J-433
Mr Robert Byvelds	
Renfrew County Agricultural Advisory Leadership Committee .....	J-435
Mr Ray Pender	
Mr Mac Coughlin	
Mr Jim Hutton	



J-17

J-17

ISSN 1488-9080

**Legislative Assembly  
of Ontario**  
Second Session, 37<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**  
Deuxième session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Thursday 20 September 2001**

# **Journal des débats (Hansard)**

**Jeudi 20 septembre 2001**

**Standing committee on  
justice and social policy**

**Comité permanent de la  
justice et des affaires sociales**

**Nutrient Management Act, 2001**

**Loi de 2001 sur la gestion  
des éléments nutritifs**

**Chair: Toby Barrett  
Clerk: Tom Prins**

**Président : Toby Barrett  
Greffier : Tom Prins**





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Thursday 20 September 2001

Jeudi 20 septembre 2001

*The committee met at 0900 in Parkway Place, Peterborough.*

## NUTRIENT MANAGEMENT ACT, 2001

LOI DE 2001 SUR LA GESTION  
DES ÉLÉMENTS NUTRITIFS

Consideration of Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts / Projet de loi 81, Loi prévoyant des normes à l'égard de la gestion des matières contenant des éléments nutritifs utilisées sur les biens-fonds, prévoyant la prise de règlements à l'égard des animaux d'élevage et des biens-fonds sur lesquels des éléments nutritifs sont épandus et apportant des modifications connexes à d'autres lois.

**The Chair (Mr Toby Barrett):** Good morning, everyone. We wish to welcome you to this regular meeting of the standing committee on justice and social policy for today, Thursday, September 20, 2001. We're meeting in Parkway Place, Peterborough. Our agenda continues for the standing committee, Bill 81.

Peterborough is one stop in a three-week tour for this committee. We held hearings in Toronto and then commenced essentially a rural tour of Caledonia, St Thomas, Chatham, Holmesville down in Huron county, Owen Sound, Peterborough today. We travel to North Bay tomorrow. We have an agenda this morning. We have a large number of presenters, a lot of interest from this area and neighbouring counties; Northumberland, for example.

**Mr Steve Peters (Elgin-Middlesex-London):** Is that Dr Galt's riding?

**The Chair:** Dr Galt's riding. I'm very pleased that local MPP and cabinet minister Gary Stewart twisted some arms to bring the Legislative Assembly to Peterborough today.

PETERBOROUGH COUNTY  
CATTLEMEN'S ASSOCIATION

**The Chair:** Our first delegation from our agenda, I wish to call forward the Peterborough County Cattlemen's Association. Good morning, sir. If you wish to

have a chair, the microphone will come on automatically. All delegations are recorded through the Hansard recording device, so we'd ask you to give us your name. We have 15 minutes. I think all delegations have been asked to perhaps present for 10 minutes. We do wish to have comments and questions from members of the committee in the remaining five minutes. OK, sir, if you wish to proceed.

**Mr Samuel Wood:** Good morning. My name is Sam Wood. I'm a farmer from Peterborough county. I have a small cow-calf herd, about 15 cows. I'm also an active member of the Peterborough County Cattlemen's Association.

I appreciate the need for the new legislation and support its basic concepts. On my farm, lessening the environmental impact of my livestock has always been one of my major priorities. Several years ago I completed an environmental farm plan on my property. Since then, I have fenced the ponds and installed a windmill to provide power to an alternative water source for my cattle. This year, I plan to build a buffer strip around my barnyard.

The environmental farm program is a good one and I feel every farm operator in Ontario should have one. I would like to see government continue funding this program.

In speaking to farmers in my area, one of the major concerns I've heard about the proposed new legislation comes from its financial implications. "How are we going to be able to afford to do this?" is a common question. Given the increased standards that will be expected of all Ontario farmers, there must be financial assistance to help us meet these new standards. There also has to be a significant phase-in period of five years or so to give everyone the chance to do the upgrades necessary. I think it's important that all nutrient managers, not just those in agriculture, should complete nutrient management plans. Owners of pristine urban lawns and golf courses can do as much damage or more to the environment than farmers. I also think it's important that farmers should be required to complete one nutrient management plan per entire operation, not just per farm, because many farmers have more than one farm.

When this act becomes law, farmers support the development and use of agriculture committees. These committees must include farmer representation. These committees must be the first point of contact for citizens with concerns related to environmental practices on



farms. Enforcement should be the responsibility of OMAFRA or an independent third party with farmer involvement.

Finally, I'm pleased that the new standards will supersede bylaws of similar focus that have been imposed in many municipalities across the province. As farmers, we're looking for clear regulations that will supersede municipal bylaws that set arbitrary caps or restrictions on livestock numbers at a given site. No other business in Ontario is expected to compete under such a restriction. There must be an effective education program so farmers and others with new responsibilities would be able to adhere to new regulations. Provincial standards must not include caps on the size of livestock operations.

Finally, I just ask, on behalf of all farmers in Ontario, please do not put us out of business with these new regulations. It is crucial that this act meet the goal of protecting the environment while ensuring a viable future for agriculture in Ontario.

Thank you for allowing me to present my thoughts to you today.

**The Chair:** Thank you very much, Mr Wood. We have two parties here, not three; I know the NDP are on their way. So we have a good five minutes for each side. We could bounce back and forth.

**Mr Peters:** Mr Wood, thank you very much for your presentation this morning. Your second-last paragraph, where you speak of not including caps on livestock operations: there has been some talk in the document circulated of various livestock units and size as far as operations are concerned. You don't feel that we should be using any livestock unit numbers in trying to set this legislation?

**Mr Wood:** I don't think the number of animal units is a concern; it's the way they're managed. If a person has 100 cows or if he has 500 cows, if he looks after them properly, there shouldn't be a concern.

**Mr Peters:** Are you going back and forth for questions?

**The Chair:** Dr Galt, and then we can come back to Mr Peters, if he wishes.

**Mr Doug Galt (Northumberland):** Thank you, Mr Wood, for the presentation. I appreciate your thoughtfulness. Just a couple of comments, and then I have a question as it relates to "out of business." Certainly it's not the intent of this government to see farmers go out of business, but I can appreciate your concern. Mr Barrett and I have travelled the province more than once on consultations. We've been looking at this for some two years. Some of the farm leaders are getting a little tired of the consultations and want us to get on with things. It's a very fine line that we're walking to protect the environment and, at the same time, support farmers and make sure that, as you say, they're not put out of business.

Let me just toss you some of the awkward situations that we find ourselves in to develop regulations, and that's a lot of what we're being asked for. One regulation you might tackle for me is winter spreading of manure.

How would you come up with a winter spreading regulation that would be environmentally sound and still look after your needs?

The second one would be very directly related to you and animals that are pasturing. You don't need a 365-days-of-the-year holding tank when they're pasturing. Sheep are similar. How would you write a regulation that covers holding tanks when animals are pasturing for whatever number of months a year?

There's two. How would you tackle those two?

**Mr Wood:** Winter manure spreading should never happen.

**Mr Galt:** But when is winter?

**Mr Wood:** November 1 to April 15.

**Mr Galt:** And I'd respond, in Quebec they had something like November 15 through to April 15, and the farm public just crucified the government over having those firm lines. Chatham is very different from New Liskeard.

**Mr Wood:** That's right, but you cannot put manure on frozen ground. It will not go into the ground. It will run off.

**Mr Galt:** How would you handle the regulation on pasturing and holding tanks as it relates to that kind of thing? How many animals per whatever, and what soil conditions would be satisfactory, where you don't need holding tanks, when they're not necessarily pasturing but out in the wintertime, say, in a woodlot? How many acres per animal and what soil conditions?

I don't mean to put you on the spot. I want to express some of our difficulties and, at the same time, get some good feedback from people like you.

**Mr Wood:** If you're feeding cattle outside in the wintertime, as long as you have enough material there to absorb any moisture, plenty of straw or sawdust where the cattle are so that the moisture won't run away—

**Mr Galt:** As long as at the bottom of the hill it's not going into the creek.

**Mr Wood:** That's right, and buffer strips around water streams so nothing can get into them.

**Mr Galt:** I noticed you mentioned that in your presentation, about developing—

**Mr Wood:** Buffer strips are very good. I'm going to put one around my barnyard this year, and I'm going to put a holding tank in. Hopefully, any runoff will go into the holding tank.

**Mr Galt:** I didn't really mean to be putting you on the spot, but I'm just curious as to your feedback on some of those difficult things we're facing.

0910

**The Chair:** I'll just bounce back to Mr Peters again.

**Mr Peters:** Thank you, Mr Chair.

In my mind, an important aspect of the legislation is going to be the environmental response teams or the advisory committees. You made reference in your presentation to the development and use of the agricultural committees. The makeup of the committee is going to be important. One of the issues, as we've seen with the issue of intensive livestock operations around the province, is

the non-farm residents who have moved into rural Ontario. What are your feelings on non-farm rural residents being members of these advisory committees?

**Mr Wood:** I think they have a place there, but they shouldn't be stacked with the non-agricultural members. They have a place in the community, but not completely.

**Mr Peters:** Say we had a 10-member committee. Could you give me a rough breakdown of whom you would like to see, out of the 10 members, on an advisory committee?

**Mr Wood:** I'd like to see at least half of them from OMAFRA and at least two local farmers in that immediate area and two independents.

**Mr Peters:** How about municipal politicians on the advisory committees?

**Mr Wood:** Yes, one.

**Mr Peters:** Thanks.

**The Chair:** Back to the Conservatives.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** In your presentation, sir, you mentioned that there must be financial assistance to help people meet these new standards. What kind of financial assistance? Would it be tax credits? Would it be grants? Would it be loans?

**Mr Wood:** It could be any or all three of them. Nutrient management plans are going to be expensive, for one thing, and if we have to do manure storage, that's going to be more money involved. Then, once you've put up another building for manure storage, your taxes are going to go up. I think grants are probably the best way to go.

**Mr Beaubien:** OK. Do I have time for another quick one?

**The Chair:** Yes.

**Mr Beaubien:** Do you think that people who are spreading nutrients or manure on land should be licensed?

**Mr Wood:** Yes, I do.

**Mr Beaubien:** OK. Thank you.

**The Chair:** Thank you, Mr Beaubien. No further questions. I wish to thank you, Mr Wood, for coming forward. I thought your presentation was very crisp and succinct and hopefully has set the tone for the day. I really appreciate the Peterborough cattlemen coming forward.

## TOWNSHIP OF CRAMAHE

**The Chair:** For our next deputation on the agenda I'd like to call forward Cramahe township. Good morning, sir. We have 15 minutes. We wish, however, to allow time for the committee for any comments. If we could ask for your name, and then proceed.

**Mr Elie Dekeyser:** Good morning, Mr Chair, and welcome. My name is Elie Dekeyser. I'm the deputy reeve of the township of Cramahe, which is located in Northumberland county. I'm also the chair of the new nutrient management committee. We just passed our nutrient management bylaw. We had our third and final

reading on September 17, 2001. The bylaw was created for nutrient management of Cramahe township.

Some of the highlights included in our bylaw:

The objective of the nutrient management plan is to provide for an optimum application of nutrients to soil on a farm-by-farm basis for intensive farms in the interests of protecting municipality water resources and maximizing the economy and biological value of the nutrients.

Fifty per cent of the lands in the farm unit must be owned by the operator for the protection of all. Our nutrient management study consists of three components:

(1) minimum distance separation;

(2) a 240-day-minimum manure storage and contingency plan; and

(3) a nutrient management plan.

Application: no person shall use any land or erect, alter or use any livestock barn or manure storage facility except in conformity with the provisions of this bylaw and the corporation zoning bylaw.

Inspections will be done by an enforcement officer.

A nutrient management plan committee will be established by bylaw of the municipality to assist with the complaint process for the nutrient management bylaw. The committee will operate as a group of peers from the farm community. It is intended that they will review complaints and consider enquiries regarding the farm management practices that relate to the nutrient management bylaw and that they will provide advice regarding the same.

An intensive livestock farm is defined as where the number of livestock units exceeds 200.

Property which is leased or rented must have signed documentation from the owner or owners for the application of nutrients.

We also sent a letter to our MPP, Doug Galt, in response to a list of things we heard about, medications being found in our treatment plants, which are of great concern to us. Also, I have some notes in here, which you have copies of, that we would like to see what's going on with biosolids and liquid sludge. I will ask the Chairman whether or not I can speak on this right now.

**Mr Peters:** It's all part of it.

**Mr Dekeyser:** Is it all part of it? This is the second page then, Mr Chairman. This is regarding biosolids and liquid sludge.

Lands must be tested for nutrients before a certificate of approval is issued to the applicant from MOE.

A second test must be done after biosolids or liquid sludge is spread on the same lands and tests confirming results of metal, nutrients etc before applying any nutrients of any sort on this land.

No nutrients are to be spread after the first test is done by MOE and before the second test after biosolid or liquid sludge is confirmed by MOE.

All copies of certificates are to be sent to the township office bylaw enforcement officer and chair of the nutrient management committee.

Setbacks from wells, tile drainage outlets and waterways are to be 75 to 100 metres minimum; setbacks from



residential, 125 metres minimum; setbacks from built-up areas, 450 metres minimum.

No spreading on frozen ground or snow-covered land and slopes.

Notification to all residents in the area two weeks before applying biosolids or liquid sludge.

Applicant must sign nutrient management bylaw agreement before biosolids or liquid sludge is applied to lands.

Any misuse of bylaw agreement will stop the spreading of any and all biosolids or liquid sludge immediately.

Liquid sludge must be incorporated into the ground immediately.

No trucks unloading onto fields; must use an elevator belt to unload from roadway.

All materials which have been spread to be covered within 48 hours maximum. This is for the biosolids.

Only owners of land can sign the application.

Landowners and the Ministry of the Environment are responsible for any damage, pollution or contamination of the neighbouring lands.

Cramahe township's bylaw will only allow biosolids and liquid sludge from within Northumberland county.

**The Chair:** Thank you very much, Mr Dekeyser. I apologize for being out of the chair briefly. I will mention that, yes, this legislation is very comprehensive. It certainly does cover municipal sludge, pulp and paper, biosolids and septage; not only animal manure, but commercial fertilizer, for example.

We now have about five minutes for each party.

**Mr Galt:** Thanks, Lee, for the presentation, and congratulations on your nutrient management bylaw and the extensive work that you've put into it. I have just a couple of questions.

First I should mention, as the Chair has mentioned, this is all-encompassing. Any conditioner, any nutrient going on or into soil on farms is—

**Mr Dekeyser:** Whether it's biosolids or farm-related nutrients.

**Mr Galt:** Or commercial fertilizer—a total nutrient-conditioning package for lands.

“No spreading on frozen ground or snow-covered land and slopes”: I empathize with that regardless of what you're putting out there. What if it's two to four inches of snow and two inches of frost and they have the equipment that can inject it into the soil? Would you stop that?

**Mr Dekeyser:** That probably would be permitted, Mr Galt, because it can't run away. It's already imbedded into the soil. That's actually the best way to apply it, to inject into the lands. We hope everybody can do that, but it's being able to afford to have the equipment to do this.

0920

**Mr Galt:** How do you handle in your bylaw the fact that a CFA for sludge is for five years, and I think what's been happening and irritating some of the public is that they come out and put the whole five years on in one application. Do you tolerate that in this bylaw—

**Mr Dekeyser:** Yes.

**Mr Galt:** —or do they have to put it on annually, a fifth per year?

**Mr Dekeyser:** They can do it either way, but we will allow it to be applied. So they can apply the whole amount at once, but they can only apply it every five years. They can also break it down if they want to put some on every year. So it's only if the neighbour put on so many tonnes per acre within the five-year period.

**Mr Galt:** My last question: how did you arrive at 50% of the land's to be owned? What about the poultry producer that has a bunch of broiler barns, maybe 60,000 to 80,000 broilers that he or she owns and they're on four to 10 acres and they sell the manure? There are lots of farmers anxious to buy it. How do you deal with that?

**Mr Dekeyser:** The poultry is different than it would be from my stock, the hog operation, because it's a drier manure matter. If intensive farming was to start up and that person needed 500 acres for their operation for nutrients, we feel if that person only had to have, say, 10% or 20% or whatever it could be, we could jeopardize that person's business. If he rented that land from me or the neighbours around, and all of sudden they all said, “I'm sorry, Mr Galt, but you can't use our land any more; we need it ourselves again,” you're jeopardizing that person's livelihood. That's the reason why we thought he might have to slow down some but at least you're not going to put him right out of business.

**Mr Galt:** So it's more for start-up. You grandfather in that poultry farmer, as an example. Thank you very much.

**Mr Dekeyser:** That's right. I'd just like to ask one thing of the Chair. What ministry is going to be looking after nutrient management? Is it MOE or it is the Ministry of Agriculture?

**The Chair:** That's one reason we are having these hearings, and this is certainly a question that's been on the agenda: where do we go?

**Mr Dekeyser:** I feel like we can't serve two masters or two masters can't serve us, because it's two sets of rules.

We have a great concern for our water quality and our air, because they just brought some biosolids again yesterday to our community and, by God, I tell you, that doesn't smell very good.

**The Chair:** As Chair, I could ask the parliamentary assistant to the Minister of Agriculture for a brief statement.

**Mr Galt:** In fairness, it's being looked at, but the intent—just so you understand, the enforcement aspect, a separated unit of people from agriculture would be the enforcement unit in environment. All of the approvals and all of the other activity, the education, the training and, as I said, the approvals, would be out of OMAFRA. That's the current thinking. It's not etched in stone; that's why we're out after first reading. But that's the current thinking.

**Mr Dekeyser:** So if we have a problem, let's say with biosolids or liquid sludge contaminating our water, who do we—

**Mr Galt:** If it's contaminating the water—

**Mr Dekeyser:** —from biosolids or liquid sludge, who's going to be responsible? Is the ministry going to be responsible if pollution—

**Mr Galt:** Regardless of this bill, if there's a spill, it's MOE's job. If there's any contamination going on, it's MOE's job.

**Mr Dekeyser:** Even after it's spread, Mr Galt? If it's spread on the person's property?

**Mr Galt:** If it's getting into water, contaminated water, air or soil, there's contamination there, it'll never be OMAFRA's job. It'll always be MOE's job if there's contamination identified.

**Mr Dekeyser:** I guess what I'm asking is, if there's contamination from biosolids or liquid sludge being applied—in our area by Terratec—who's going to be responsible for the damages to somebody's well? Is MOE going to pay for the costs if you have to drill a new well or is that up to the farmer? Where's that going to end up?

**Mr Galt:** The charges are the responsibility of MOE in enforcement. When it comes to the other, now you're into some courts. It's up to the courts and all the rest of the things that happen in the lands. It's not something that's laid out in legislation, how that's going to happen.

**Mr Beaubien:** A very quick question, sir. Thank you for your presentation. In your presentation you mention notification to all local residents in the area two weeks before applying biosolids or liquid sludge. When you mention "all local residents," do you mean the entire municipality?

**Mr Dekeyser:** No, just the area where they're going to spread the biosolids or liquid sludge.

**Mr Beaubien:** That's pretty vague, though. Is it 400 feet? We've heard that minimum distance separation in Chatham should be 1.5 miles. That's a long distance.

**Mr Dekeyser:** I must apologize; I didn't really put that in. Anybody within half a mile of where they're spreading the biosolids or the liquid sludge should be notified. Right now, they're not being notified at all and people are concerned. All of a sudden they see these trucks pulling up and they give me calls, "What's going on?" Yesterday morning I had one.

**Mrs Tina R. Molinari (Thornhill):** Very briefly, in the consultations in the last few weeks there have been some common themes in some of the presentations. First of all, I congratulate you on your initiative in developing bylaws. I think that's a wonderful first step to be taking.

I don't know if you were present in the audience, but the presenter just previous to you was saying that the provincial should supersede municipal bylaws. That's been one of the questions that's been ongoing: which law or legislation should supersede, taking into account that there has to be some commonality across the province, taking into account some individual differences within municipalities?

What is your view as to the role the legislation should play in comparison to municipalities which take initia-

tives such as yours in developing bylaws, taking that kind of initiative?

**Mr Dekeyser:** Personally—and I'm talking about my committee at the same time—we felt, and I strongly felt, that a blanket bylaw on nutrient management across Ontario cannot work because we have different lands in different places. London, Ontario, and the Chatham area have different land than Northumberland. We have hills, we have gravel, we have sand, we have all types of land and a lot of hills. In that way, when you set certain setbacks for a well or a residence or anything else, that might be fine for Chatham, but it cannot work where we live because of the hills and the topography of the land.

**Mr Peters:** Following along on a couple of Mrs Molinari's and Dr Galt's comments, I'll start first with the 50% land ownership issue. In Huron county—I may have these reversed—I think it was 25% land ownership in their bylaw; Bruce or Grey county was talking 30% land ownership. You've included 50% in yours. We're talking province-wide legislation that's going to create a level playing field across the province.

Not knowing what that number is, what is the feeling going to be if, when the regulations are written up, they say 30%? How is Northumberland going to react to that? This is going to supersede your own bylaw, which is 50%, and let's say the standards are set at 30%. What's the reaction going to be in Northumberland?

**Mr Dekeyser:** Again, I can't talk for all Northumberland. I can talk for our township, and it's very rolling land. That's one of the reasons why we keep on insisting on the 50%. It's for the protection of the operator who's going to go into business. We feel that at 20% or 30%, whatever the number is, you could jeopardize that person's livelihood.

If they rented that land from a neighbouring landowner or wherever, and all of a sudden that landowner decides they need to sell to someone else, or they want to use it themselves, for whatever reason, that person could be jeopardizing his business. I don't want to be saying to a person, "Go ahead, you build your million-dollar barn, whatever it's going to cost you," and then three or four years down the road say, "Excuse me, you can't do this. You haven't got enough land." Like we just said, if we ask, if you need so much land, you've got it. It keeps that person with a little bit of security. That's the big reason we keep saying 50%.

**Mr Peters:** Another aspect of provincial legislation's potentially superseding your local bylaw would be, we know that the spreading of septage is to be phased out in five years, but right now biosolids are going to continue. Your bylaw reads that biosolids can only come from Northumberland.

**Mr Dekeyser:** That's right.

0930

**Mr Peters:** What is the reaction going to be in your township or in Northumberland if this is province-wide legislation which would allow for biosolids to be transported and spread anywhere?



**Mr Dekeyser:** They're not going to be very happy, I can tell you that right now. MOE tells us all the good parts that are in the nutrients of the biosolids and liquid sludge, but they do not tell us one thing about the heavy metals, the viruses, the bacteria, anything that can contaminate our water, our lands and anything else. That's what they're worried about.

We thought with the sludge coming from Northumberland county—we don't have the industry like you have from Toronto, and that's where a lot of our biosolids are coming from, Ashbridges Bay. It does scare the hell out of people.

**Mr Peters:** One of the things I think has unfairly happened is that the agricultural community has been the scapegoat for water quality problems in this province. We all need to recognize that there's a collective responsibility.

You live in a rural municipality. A lot of people, probably the majority of your residents, are on septic systems. Right now when they need those septic systems pumped out, they can call the local honey truck to come in, pump it out and go and spread it.

With septage going to be phased out over a five-year period, do you think that the time has come that we need to take a more serious look at what septic systems are doing to the groundwater quality in this province?

**Mr Dekeyser:** Yes, I do, because they're just as guilty as the rest, or to some degree. In Cramahe township we just amalgamated with the village of Colborne and we have our own treatment plant now. If it comes to that, we could bring the raw sewage from private septic beds into our own treatment plant.

**The Chair:** I wish to thank you, Mr Dekeyser. We appreciate this from Cramahe township.

#### INNOVATIVE FARMERS ASSOCIATION OF ONTARIO

**The Chair:** I now wish to call forward our next delegation. I would ask the Innovative Farmers of Ontario to approach the witness table.

Good morning, sir. We have 15 minutes. We are asking people to allow five minutes for comments or questions, so if you wish to proceed.

**Mr Eric Kaiser:** Good morning. My name is Eric Kaiser. I farm in Napanee, Ontario, and I'm a director of the Innovative Farmers Association of Ontario. This presentation was prepared by a committee of the board of directors. As you are probably aware, when things are done by a group of people, it tends to be a little longer than it should be. I will likely drop sections when I read it. I'll read it as quickly as possible in the interest of leaving time for questions.

The Innovative Farmers Association of Ontario wishes to make it clear that we fully support the concept of a Nutrient Management Act. We applaud efforts to standardize requirements for nutrient management across the province, and we believe provincial jurisdiction is necessary to achieve this goal.

The concepts behind the Nutrient Management Act parallel the driving force for the creation and continuing mandate of IFAO: advance the knowledge of environmentally and financially sound agriculture. Our whole concept is clearly driven by a desire to reduce negative environmental impacts created by least-cost requirements in the North American food production system. IFAO is farmer-conceived, farmer-driven and farmer-maintained. We have been leaders in environmental protection and responsible use of agricultural resources.

We believe we are in a better position to respond to Bill 81 than many environmental groups since we live day to day with agricultural environmental issues. We endeavour to find positive solutions, not negative rhetoric. We practise what we preach. Any and all comments we make must be accepted as coming from a leading, involved and caring group of farmers—the original environmentalists.

IFAO is interested in how the act will affect individual farmers. As such, our main concern is with the regulations that will follow from Bill 81. Since these details are absent from the act at the time of this meeting, our response must be as general and as sweeping as the act itself.

We feel the act is too open-ended. We are nervous that the government could not decide what legislation they needed, so they implemented carte blanche, allowing rules to be made up as we go along without adequate scientific basis or even experiential justification. The act fails to provide or even acknowledge the need for base levels to be established as a starting point. How is it possible to know if the act is successful if we have no environmental starting points? What assessment techniques will be used to decide if regulations are having a positive or negative effect on nutrient pollution? How will you monitor success? What constitutes success? How big is the problem now? The government assumes no responsibility for creating or providing solutions.

We suggest the agronomic expertise and farmer rapport established by OMAFRA be utilized in creating and enforcing this act. A team approach, led by OMAFRA and encompassing the environmental, natural resources, engineering and agronomy fields, should be used in preparing regulations.

This act fails to be positive. The act does not adequately recognize the diversity of the farming community.

There are many farmers who are not physically or financially capable of doing the work necessary to research and implement fully effective nutrient management systems that are integrated into their crop and livestock operations. Governments have drastically cut areas of research, engineering and extension. The current electronic information system is totally inadequate as a replacement for on-farm or on-site advice. Nowhere in the act are provisions made for education, funding, research and accessibility for farmers. There is inadequate research in the handling and use of all nutrient

sources, including sludge, animal manure and other farm, industrial and urban nutrients.

The act has a totally negative approach. It is of considerable concern to IFAO that a major percentage of the bill deals with policing and penalties. It cannot go unnoticed that 46 of the 64 pages of the act are devoted to enforcement of the act. This government appears to be ready to treat farmers, your food producers, as potential, even likely, criminals.

Fear of public outcry in regard to nutrient pollution is creating a new group to harass. The message is clear: pass the buck, blame the farmers, farmers are criminals who need to be legislated. This group is made up of many poorly financed individuals who may be inadequately informed and easy prey for environmental police. We suggest that it would be better to devote more time and expertise to the development of scientifically based answers that can be used in the implementation of nutrient management plans. Also, it is necessary to have policies that expedite environmental improvement. Assistance provided in a combination of financial aid, technological resources and on-site demonstrations that encourage farmer participation would be much preferred to the adversarial approach taken in the act. There is no mention of government funding at any level or any other assistance in this act.

Farmers are stewards of the land and need the help of society. It must be clear that we farm in North America, not just in Ontario. Except in commodities with supply management, farmers must compete directly with other North American producers. Farmers are price takers and cannot pass on costs. There are negative repercussions for taking part in non-revenue generating activities. There is no incentive to implement plans for the benefit of society at large. If society wants a safe, clean, healthy environment, then society must invest in a food production system that can support environmentally friendly practices. A cheap food policy does not encourage this.

This act does not provide for incentives, grants, loans, moratoriums, demonstration areas or a multitude of other methods of implementation that have been proven to create positive change. The environmental farm plan, land stewardship I and II, CURB and other agricultural environmental programs that provided financial incentives, combined with education, resulted in success stories.

Sections that could require large, open-ended costs should be moderated or provision made for government funding. The sections are mentioned.

This act may disrupt or interfere with present farm practices. IFAO is the outgrowth of activities initiated by a group of individual farmers who sought solutions to problems associated with conventional crop production systems. The problems with conventional management include erosion, compaction, high cost of production etc. The most common response to these concerns was the development of a no-till production system. As is clear from the name, no-tillage is used to prepare, plant or weed the crop. The most significant benefits of no-tillage

farming are listed. IFAO continues to be active in fine-tuning the no-till system and promoting its benefits to agriculture.

IFAO is very concerned with any section of the act and any ensuing regulation that would require the compromise of farmers' no-till systems. Over a period of several years of no-till, a situation develops called the no-till advantage, where soils become easier to manage, more productive and, important in a dry year like this, less drought-prone. One year of conventional tillage has been shown to eliminate all the benefits of the no-till advantage. The loss of sequestered carbon and the increased use of tractors to do tillage could impact our country's commitment to the Kyoto protocol. Sections which could compromise are shown there.

In conclusion, it is clear that this act must be rethought and rewritten. While it is necessary that the act contain the required policing clauses, it must have a much more positive slant. It must provide for the necessary help and funding to allow farmers to improve and maintain the rural environment, while still feeding the residents of Ontario.

IFAO suggests this rethink and rewrite be done by an OMAFRA-led coalition, including lawyers and MOE as part of the team, and not the team leaders, as was apparently done in preparing this first version of the act. We attach a letter that IFAO wrote to Don Hilborn of OMAFRA in the fall. It details some of the things that might be done in the regulations to accomplish our goals.

0940

**The Chair:** Thank you, Mr Kaiser. This leaves two minutes for each party for any comments or questions. We'll begin with the Liberal Party.

**Mr Peters:** I appreciate your comments on scientifically based answers. There have been a number of common threads throughout the tours—this is stop number eight—and one of them is the cuts we've seen inflicted on OMAFRA by this government and the fact that a lot of the research isn't being done like it was in the past. I think that is something we really need to take into consideration.

I'd like to go back to your no-till point. In south-western Ontario, as an example, it's quite common to see the wheat fields right now, the stubble, the manure being spread on that stubble, and next year there is going to be corn planted in those very fields. It was something that was pushed by OMAFRA, to look toward no-till. You have made a point here, but is it going to have some real effects on those farmers who have practised no-till to all of a sudden have to start incorporating this manure into the soil?

**Mr Kaiser:** We don't know, because we don't know what the requirements will be. We don't know what the effect of the policing will be. We simply don't know, and that's one of our concerns with the act. There are just too many "don't knows" to make an adequate response at this time. That relates to our initial comment.

There is no question that if you incorporate manure you could, depending on the conditions that were



required. We in our case do incorporate manure, but we incorporate it only lightly and we incorporate it in August, at the driest time of the year, when you do less damage to the flora and fauna of the soil, so the compromise is significantly reduced. But we don't know what the regulations are going to require, so I can't give you a straight answer.

**The Chair:** I now go to the PCs.

**Mr Carl DeFaria (Mississauga East):** Thank you, Mr Kaiser. I represent an area in the city of Mississauga, which is an urban area. I'm very concerned about your comments with respect to the act. We have members in our party who have been fighting and working for years, like Dr Galt, and Toby Barrett, the Chair, who been working for a couple of years, speaking to the farming community and trying to develop an act that would respond to their needs. The member for this riding, Gary Stewart, is very involved in that process.

As a city representative I am more concerned about the costs to the residents in my riding. For example, you know that this act also affects urban sludge, paper sludge, all kinds of things that will increase the costs to residents in cities like Toronto and Mississauga. That's what I'm concerned about.

You say, for example, that the government appears to be ready to treat farmers as potential criminals. This doesn't affect just farmers; it affects people in the city. Representatives from the farming community and our government have been pushing for some sort of tax credit, some sort of assistance to farmers. I want you to tell me, should that assistance also go to people in my riding who are in the city, who have to put up with the cost of dealing with urban sludge?

**Mr Kaiser:** My sister lives in your riding, Mr DeFaria.

You raise a number of issues and it's difficult to answer them all at once. Since I don't have a stenographer to take them down, I'll make an attempt.

There is no question that where the urban sludge belongs is where it came from, just like poultry manure in our case or any other livestock manure. It should go back where it came from, which is on the farmland of Ontario. The problem is that we don't know what else your urban residents have dumped into the sewage system. That's point number one.

Point number two: the residents of Canada enjoy the cheapest food in the world. You're not paying the freight right now for the environmental impact of the production system you're requiring us to use. You can take some of that money from your cheap food and apply it to handling your nutrient problems, and you should. In other words, the residents would have to pay in the form of taxes.

In our case, we don't benefit; in fact, we pay the freight for your cheap food. We don't have another source of income to put in place the policies that should be required to mitigate our nutrient production problems. I see it as a separate problem with a separate solution.

You have the benefit of our cheap food production; we don't.

If I may comment, what we have here is a situation where agriculture is an insignificant number of the population, and it also happens to be an insignificant number of the rural population, and it is those rural residents, those "rurbanites," if you will, who are dictating the policy for your problem and mine. We now have allowed those people to be scattered across the countryside, and they feel they're justified in asking for solutions to problems that you and I both have. Therefore, you have a small percentage of the population, who are "rurbanites," driving the policy both for you and for me.

**Mr DeFaria:** The point I'm trying to make is that that affects people in the city. As far as the cost is concerned, it's going to affect them in the same way. As far as food, I agree with you that food producers are very important to Ontario, but people in the city pay the market price for the food they eat. So you have to understand that it works both ways: you wouldn't be able to produce the food if there weren't consumers to buy it and consume it.

**The Chair:** Mr Kaiser, thank you. I appreciate the Innovative Farmers Association of Ontario coming before the committee.

#### CITY OF KAWARTHA LAKES

**The Chair:** I now wish to call forward our next delegation, the city of Kawartha Lakes. Good morning, gentlemen. If you'll have a chair, we'll ask you to give us your names for Hansard. We have 15 minutes, and we are asking that you leave time for comments or questions from the committee.

**Mr Dennis Zekveld:** My name is Dennis Zekveld. With me are Dave Wellman and Richard Danzinger.

On behalf of the city of Kawartha Lakes, I would like to thank you for this opportunity. I'm chair of the nutrient management planning committee for the city of Kawartha Lakes, Dave Wellman is a committee member and Richard Danzinger is the director of planning for the city of Kawartha Lakes. This presentation that we're doing today has the full endorsement of our council. Now I would ask Dave Wellman to go through the presentation.

**Mr Dave Wellman:** Our committee has been appointed by city council to deal with nutrient management issues. We are comprised of farmers and interested rural citizens.

The nutrient management committee has reviewed Bill 81. Council and the committee support the principle of this legislation. As we will explain during our presentation, we have a number of issues that we feel need to be addressed by the provincial government.

Our committee and council support the underlying need for this legislation. A patchwork of different municipal bylaws, the potential for community division because of the siting of new livestock barns and the negative publicity associated with modern farming



practices, especially following the Walkerton tragedy, are all issues that highlight the need for this legislation.

There are number of positive aspects to the legislation, including the consistency of provincial legislation when dealing with nutrient management; the local mediation of disputes; OMAFRA's leadership of this legislation; and the use of the standard that has been developed through the Ontario Farm Environmental Coalition.

While there are positive points, there are also issues that we feel must be addressed. In the interest of time, we have divided our submission into two portions: the verbal part that we will present to you in a moment, and a supplementary written document that contains straightforward improvements to the wording of the act.

I'll begin with the need for financial support and realistic expectations. Livestock are the dominant component of most of the farms in the city. According to the last census, there were 1,702 farms in the city, and approximately 1,200 of these farms had one or more species of livestock as part of their operations. Placed in another context, livestock and livestock product sales accounted for \$51.4 million out of \$80 million in total farm gate sales in the city of Kawartha Lakes.

With respect to this legislation, we have heard many producers state words to this effect: "Well, depending on what this nutrient management law requires, we may just decide to get out of the livestock business entirely." It is important to note that this legislation may be the last straw for some producers, when coupled with (1) low returns on a long-term average for agricultural commodities; (2) aging equipment and infrastructure on many farms; and (3) an aging farm community. According to information from the 2000 farm business registration program, 55% of farmers in Ontario are over 50 years old. All of these factors threaten the sustainability of our farming communities.

**0950**

For many farms there will be significant capital investment required, which could be in the magnitude of \$40,000 to \$50,000 per farm. Without substantial financial support from the provincial government, many of these farms will not be able to meet the legislation's regulations. In many cases this could result in the end of many multigenerational farms throughout our city and all of Ontario.

While this scenario is potentially devastating for the farmer, it could radically change our rural communities as well. It could negatively affect local businesses that depend on farmers' support. As a city we will suffer from having less vibrant farms than we once did, which will have repercussions on rural land use, the tax base for the municipality and the vitality of our community.

It is suggested that farmers may have to pay over and over again for their improvements. While improvements are generally a one-time capital expenditure, if the resulting "improvement" increases the assessment on the property, the farmer will end up paying for the improvement every time property tax is paid. We believe that one of the legacies of this act could be to increase the

property tax burden on many farms in Ontario. As such, it is imperative that the Ontario government examine the tax implications associated with this legislation. After an examination of this issue, it will be necessary for the province to make adjustments in taxation policy to ensure that farmers are not unduly burdened by increased taxes because of farm structural improvements.

There needs to be a large menu of ideas and options available to farmers to comply with this legislation, including low-cost solutions for nutrient management, financial assistance from the province and training and education opportunities for producers. We often note that solutions proposed to a problem focus on a structure or piece of equipment such as the so-called silver bullet, and we overlook the importance of the manager or the operator. The development of the regulations and strategies associated with this legislation need to balance a number of larger issues such as environmental stewardship, financial viability, human capacity and rural sustainability.

There are a number of compelling reasons for this province to establish realistic regulations for this act. It will build upon the stewardship ethic that exists on farms today and has been developed through programs such as the environmental farm plan. It will help to restore confidence and offset doomsday stories about how this legislation could wipe out the family farm in Ontario. From a financial perspective, realistic expectations will lessen the need for financial support from the province.

We will leave this topic by reminding the Ontario government of the old saying, "Be careful what you wish for, because you might get it." We have observed many conflicts with the siting of new livestock barns throughout Ontario, and many groups opposed to these barns have indicated the need for nutrient management legislation. While we are not passing judgment on these large operations, we believe that these large corporate farms may be the only farms able to cope with new regulations, because they have the financial backing to undertake the capital improvements and the staff resources to deal with the paperwork associated with nutrient management plans. In fact, if there is an exodus of existing farmers, it may be easier for these large operations to grow even larger.

Next is the need for a science-based approach to dealing with this issue. While most of the act is based on established scientific principles, there are some areas that require further study or consideration because they seem rather arbitrary.

We believe that this legislation should include the creation of a technical standards board. While the Environmental Review Tribunal will deal with the legal matters associated with the act, the technical standards board could rule on scientific and technical matters as they arise. New technology will continue to develop, and there will be a need to determine whether or not a technology is appropriate for nutrient management vis-à-vis compliance with this legislation. This board could provide proactive judgments. As an example, a farmer



could ask for a ruling on a new technology prior to implementation. If the board accepts it, the farmer can proceed with confidence, or, if the board rejects it, the farmer can pursue alternative arrangements. Because it is a technical committee, qualified scientific and technical people should be appointed to this board. We suggest that the Building Code Commission could serve as a model for the role, membership and legislative framework for this board.

The use of livestock units does not seem to be an adequate measurement standard for this legislation. Livestock units were originally designed to determine odour tolerance, not nutrients, for minimum distance separation guidelines. We suggest the development of guidelines based on equivalent nutrient excretion values would be more appropriate. While we raise this point, we recognize that livestock units are only a trigger which will determine how quickly a farmer will have to complete a nutrient management plan. Because all farms will be required to complete a nutrient management plan eventually, there may be other pressing issues that require a greater amount of attention.

Nutrient management plans will be based on phosphorous values. Above a predetermined point, likely 60 parts per million, the soil will be deemed to be in excess of phosphorus. At this point, a farmer will only be able to apply nutrients to meet crop removal needs. While it is important to use nutrients wisely, it has been pointed out that other jurisdictions allow soil nutrient levels beyond this point. It has been suggested that the risk to surface water with excess phosphorus is well above the 60 parts per million level. Soil type can also impact the amount of available phosphorus, which could unduly restrict some farmers with this issue. We are concerned that farmers in our area could be unfairly restrained compared to producers in other jurisdictions.

Winter spreading of manure is another issue that will require some scientific evaluation. We recognize that winter spreading is not a best management practice. However, we have found very little Ontario-based research on this subject. What little research there is was done at Cornell University and Iowa State University. Both research groups indicated that winter runoff was high only if manure was spread immediately, within 48 hours, before a significant runoff event. In addition, if the government states that manure cannot be spread between two specific dates, virtually every farmer will be spreading the week before the ban takes effect and the week after it is lifted in the spring, regardless of the environmental conditions at the time. With this issue, there needs to be flexibility due to weather events, emergency situations and other occurrences, and the legislation should allow for contingency in the event of unforeseen circumstances.

In addition to further Ontario-based research on this topic, we would suggest doubling separation distances to watercourses and wells for winter spreading and that reasonable precautions related to weather conditions be taken.

Next will be comments related to specific wording in the act.

The attached supplementary document from the city of Kawartha Lakes provides specific suggestions to improve the wording of the act. As we indicated in the introduction, we will not read these items verbatim to you. However, in view of the importance of the wording, we will offer the following highlights for the committee.

First, in the establishment of a registry of information, we urge caution in who has access to this information.

Second, the act prohibits the conversion of other farm buildings to livestock facilities. Once again we would urge caution, because situations may arise, due to fire or natural disasters, which require temporary arrangements to be made.

Third, in the course of investigations, we would ask that officers take every precaution to respect biosecurity provisions and that animal welfare be taken into consideration.

Finally, generally speaking, the provisions for investigations seem quite heavy-handed. The powers of investigating officers need to be balanced by the rights of the individual or the group under scrutiny.

While we have provided many comments on this act, we wish to reiterate that the city of Kawartha Lakes supports the principle of this legislation. We believe that our suggestions will improve the legislation and community acceptance of it. We would also like to restate the importance of the need for significant financial support from the province for farm projects which are necessary to achieve compliance. Finally, a balance between environmental stewardship and the viability of our farm and rural communities is critical to successfully implementing this legislation.

Thank you for considering our comments today.

**The Chair:** Thank you. That does wrap up our 15 minutes. On behalf of the committee I wish to thank the city of Kawartha Lakes for coming forward.

1000

#### SAFE SEWAGE COMMITTEE

**The Chair:** Our next delegation from our agenda: I wish to call forward the Safe Sewage Committee. Good morning. We would ask you to give us your name for the Hansard recording. We have 15 minutes; if you could set aside five of those minutes for any comments or questions.

**Ms Karey Shinn:** My name is Karey Shinn. I am the chair of the Safe Sewage Committee. It's a Toronto-based organization. We have been in existence for 10 years. We have researched and travelled to many conferences on waste water, water, biosolids, toured many, many sewage treatment plants in both North America and Europe.

We've read the act and we appreciate this opportunity. Without the regulations, however, many aspects of the Nutrient Management Act are impossible to judge in terms of effectiveness in meeting its objectives, such as



protecting the environment, public health and sustainability. The way the Nutrient Management Act reads today, there is a great deal of authority given to the Lieutenant Governor in Council, which I understand is the cabinet, and no explanation of what expertise would inform them.

I have outlined this in terms of recommendations because I didn't understand exactly the best way to do this.

Recommendation 1: in order to provide the opportunity to ensure that this enabling legislation, the Nutrient Management Act, works in the context of the regulation legislation, we request that the standing committee recommend that the province hold formal public consultation, as well as any postings on the Environmental Bill of Rights Registry, when the legislation containing the schedules and regulations is available.

Recommendation 2: that farm and municipal generators of nutrient material be required to include short-term—several seasons—medium-term—three to five years—and long-term—six to 40-year—planning horizons in their nutrient management strategies and individual plans. This is common for large cities. Vancouver, for example, has one. Sustainability will not be achieved without long-term planning. This concept has the benefit of shifting the onus from short-term storage-related issues to long-term management of soil quality and alternative uses.

Farms and municipalities will be generating nutrient material indefinitely and in increasing quantities. At the same time, much of Ontario's agricultural land is being sold off for urban development. Long-term planning will keep the pressure on the quality of nutrient material and open up opportunities for its use.

Recommendation 3: specific reference should be made to the biosolids land application guidelines and the role of the biosolids utilization committee, either in terms of strategy development on a province-wide basis or on the generation of new guidelines or regulations that may be required for new innovative technologies, non-food crops, mine-tailing reclamation, revegetation, brownfield site remediation etc.

Recommendation 4: that generators of nutrient material be required to reduce pathogens to a safe level in the same way that biosolids must meet pathogen reduction targets before specific uses. To reassure the people out here, our biosolids in Toronto do not leave until they have met these reductions.

Calling this the Nutrient Management Act has not reassured the public that what happened in Walkerton as a result of E coli from cow manure wouldn't happen again. There must be some regulation that requires testing of manures in the same way that municipal biosolids are processed and tested to ensure that levels of pathogens are safe for specific land applications. Composting, for example, is a very low-tech process that reduces both pathogens and volume.

Intensive feed operations, from what I've read, grow animals with non-traditional feed, pump them full of

antibiotics and naturally create wastes with high levels of nonylphenols in the case of pigs. There need to be testing processes that capture specific contaminants.

In the absence of a volume reduction requirement, large livestock farms could challenge municipalities for farmland, given that a single pig can generate six to 10 times the amount of biological waste as a human. Permitting large livestock operations should go through the same process as siting a sewage treatment plant.

The definition of "nutrient" should be accompanied by a minimum-quality standard, definition of contaminants not allowed, and in part II, schedules of allowable thresholds for various types of contaminants found in any or all nutrient material, including heavy metals and synthetic toxins. These could cross-reference some 20 years of research done in connection with the USA regulation 503 and other data from reliable research or professional scientific organizations and soil scientists.

On part II, recommendation 5: that approval of strategies and plans be approved in a set amount of time. It is not possible to prevent the generation of waste from livestock or people, because the ministry may be understaffed. If there is a need for phasing in plans from different generators, priority should be quality driven.

Given that small generators may not have the financial resources to perform adequate testing, will the province provide resources to these generators and receivers of nutrient material? To avoid costs to a small farm operation, it might be possible to certify an on-site composting process, for example, that operates to produce an excellent quality manure that does not require testing.

Groundwater flow mapping should be a regional or provincial district responsibility.

Referring to innovative technologies, our recommendation is that a protocol be identified for pilot projects, how they could proceed and how long it would take to generate appropriate guidelines or regulations.

Recommendation 7, respecting certificates to farmers in compliance: a landowner who sells a farm property for subdivision, rezones for recreational use or removes the farm from a properly certified and licensed nutrient management plan must give a reasonable amount of notice to allow time for alternative uses or secure additional storage.

Recommendation 8: that a provincial inventory be compiled and made available to generators of nutrient material of the existing soil quality of farmland in Ontario, the types of nutrient material that are appropriate to apply in those areas and how much nutrient material is being generated in the province. This would inform all parties of any growing surplus of materials, lack of appropriate land for application and the need to look for new technologies and alternatives.

Recommendation 9: that the province identify long-term destinations—landfills or mine-tailing reclamation projects, revegetation projects, brownfield site remediation projects etc—for this material and/or prompt higher quality material for unrestricted use.



A project in Washington state is controlling pressure from population growth around Seattle through a 50-year biosolids forestry program along a 100-mile stretch of interstate highway. The program generates state revenue and reduces sewer rates. I have identified my source.

In Ontario, Domtar has developed a tree-free paper using hemp and cellulose from sugar-cane processing. Cultivating 10,000 acres of hemp for paper pulp can save 40,000 acres of trees. Biosolids would make this more economically viable, as it does require fertilizing. These are just examples of types of projects.

Inspections and orders, recommendation 10: we recommend new officers or more officers be employed so that adequate numbers of trained persons are available to carry out inspection and enforcement in a reasonable amount of time.

Recommendation 11: that there be a requirement to have large signage on all trucks that are used for land application of nutrient material. Unidentified trucks have caused the public to jump to a conclusion that what they are doing must be illegal. For some reason, people think that Toronto biosolids are the worst, and I'll tell you, I've read enough federal research documents to know they're not. So I think it's important that these things be identified so people do know where things come from.

Recommendation 12: that there be a clearly set out process for reporting complaints or suspected violations of this act and accessible information to allow a member of the public to assure themselves that they are not calling in a frivolous complaint or harassing the enforcement agency or director. I have a question here: what approved tests will be applied to verify that an offence has been committed under the act? Some offences may be visually obvious, some may be requiring laboratory testing. Is odour included in this section? If so, what number of odour units over what period of time, for example, would constitute a violation?

Recommendation 13: that foreign owners must put up special bonds or collateral for potential recovery of costs. Many corporations in Canada are subsidiaries of American firms. Non-Ontario residents can run large livestock operations. Recovery of costs from out-of-province owners needs to be addressed in order to avoid financial risks to the public. Declaring bankruptcy and being an out-of-province resident would be an easy way to avoid financial responsibility. Some corporations may not own real property to tax anywhere, and we have experience in Toronto where certain companies have done just that. They've just left the country and not paid, and we've been paying that ourselves as the public.

It is our opinion that the province should be the regulating body, overseeing all the sections of the act. Section 55 creates a third party authority for anything except parts IV, V and VI. What relationship might this third party be to a municipality, farmer or contractor, or not, under the act? It wasn't clear how a variety of these third parties would make decisions that would always be consistent with other third party authorities. How will

conflicts of interest be scrutinized as firms are bought by larger firms that may operate land application programs?

Recommendation 14: that a fair competition provision prevent the creation of a monopoly in the business of land application of a particular type of nutrient product, such as biosolids. This legislation should develop competition as well as opportunities for publicly owned, enclosed regional storage facilities to ensure that compliance with the act is always possible. Some corporations in the business of land application management and operations are so large that if one of these corporations were to lose their licence or go bankrupt, major problems would be created in nutrient management strategies and plans that would have questionable alternatives to turn to. To prevent problems, the province must require long-term planning that identifies landfill sites or pilot projects, as I've stated before.

#### 1010

In part VIII there was an exception made in section 61 for animal wastes disposed of in accordance with normal farm practices and the Nutrient Management Act. We think there should be some preventive treatment by, for example, adequate composting of manures, to guarantee that pathogen levels in any farm manure are reduced to levels that we know will not transfer a health risk from a farm operation to a person. I remind you that the E coli that killed people in Walkerton came from cows on a well-managed farm. There is nothing in this act yet that would prevent a Walkerton-type tragedy happening again, and this exception presents a serious risk.

I contracted tetanus myself as a child on my grandmother's farm and I can assure you that this came from the manure on the pitchfork. I'm very concerned about those types of risks. Also, I think the province could take initiatives here to reduce biosolids in terms of permitting new sewage plants like they have in Niagara that produce no biosolids; composting toilets in parks, which would be a damn sight better than those Port-O-Lets; and composting on farms done far more like they do with the organic farming practices.

**The Chair:** Thank you, Ms Shinn. We have two minutes for each party for questions. We begin with Dr Galt.

**Mr Galt:** Thank you for your presentation. Obviously, you read the bill in great detail and put together a lot of good recommendations. I'd just like to respond to a few of them.

As it relates to Walkerton, as you mentioned, it was a well-run farm, owned by a veterinarian, a family type of farm, a small beef operation, and an E coli organism that is devastating to humans but a relatively new organism, as we understand it, 20 to 25 years that it's been around. I believe the virus has moved in antigenic material from Shigella over to E coli. But then we had a flood and then we had wells that weren't sealed and then we had three points in a water treatment system where chlorination should have occurred and didn't occur. It was not an intensive farm operation by any stretch of the imagination. I just want to clarify that.



**Ms Shinn:** Yes, I understand that.

**Mr Galt:** In your part I—I guess it's still under recommendation—you're suggesting horses are not included in the bill. Under section 1, which refers to "(a) livestock, including poultry and ratites," and it goes on to fur-bearing animals, but "livestock" certainly includes horses, cows, pigs, sheep, goats and so on. So horses are included there as livestock. The other items are just in case people don't think of them as livestock, they've been added in.

Your comment on Domtar and the hemp: that's not new; that's a very old technology, making paper out of hemp. The biggest problem is what it looks like compared to marijuana, its first cousin. That's why it went out of vogue some time ago. But, yes, the federal government now allows us to grow hemp and we're now able to produce it and it's recognizable, and by all means going ahead.

**Ms Shinn:** Yes, it's excellent paper.

**Mr Galt:** There are some other good comments here. It gets to my last question. I don't mean it as facetious, but I'm curious. You're from Toronto. You've made a choice to present in rural Ontario rather than in Toronto; I think it was two weeks ago Wednesday we met in Toronto. Why would you choose, as a Toronto resident, to present in rural Ontario rather than at Queen's Park in the Toronto hearings?

**Ms Shinn:** I don't think it was really a choice that I would have preferred to make. I'm not really good at the Internet and I could not get to the part of the site of the Environmental Bill of Rights registry that showed me the dates until it was too late. So we phoned, and when I called Mr Prins's office they said you would be in Peterborough and Owen Sound and some other places, and this was one that we thought was fairly close. We do go out to speak to people in communities around Toronto quite a lot, and I don't mind travelling out here. It's very pretty.

**Mr Peters:** I'm glad you came to rural Ontario because, with some of the urban problems, we don't realize in an urban municipality how bad a polluter we are ourselves. As a former municipal politician who received those calls every summer when the beaches were posted in Port Stanley, I know that municipalities are as big a polluter as the agricultural community. Unfortunately, that brush has painted the agricultural community.

I'd just like to make a few comments. I don't take exception to too much that you say in here, but I take exception to the generalization that "intensive feed operations grow animals with non-traditional feed and pump them full of antibiotics" etc.

I can take you to an operation that is like walking into—you've got to go through two showers and I wouldn't even be allowed in there right now with my cold. One of the keys to that operation is that they're not pumping them full of antibiotics and other things. I just throw that out; I don't want to get combative.

I just saw yesterday or the day before on the Internet that Switzerland has just announced they're going to be

banning the spreading of biosolids. Do you feel that the science of biosolids is understood? We've just recently heard news of residual traces of antibiotics etc turning up in sewage plants. Do you feel that we've done sufficient research in understanding biosolids and what's in them and the long-term ramifications of what's in them, in spreading them on the fields, or is this an area where we need to focus more time, energy and money in researching biosolids?

**Ms Shinn:** I think in the case of biosolids, the pH of the soil is probably the most important factor. I'm not sure that's in any of the particular regulations that I've read, but there have been huge amounts of research. In the case of Switzerland, there's actually talk in Scandinavian countries of banning agriculture, period, because the whole practice—they can't control the pollution from it at all.

I think that you are always going to find a range of acceptability and non-acceptability of different types of things. The best response that I've ever come across is to actually do something like Toronto has done. We have the most stringent sewer-use bylaw on the continent, that now includes nonalphenols and cylates. Nobody else has this. We have inspectors. I say this because I don't think you can control contaminants once they're put in the environment. They have to be prevented from going into the system.

The history of these pollution prevention plans in the States and at very large installations, like Dow Chemical—often environmentalists have gone in there to work with them to reduce hazardous waste. In doing so, going in there trying to create pollution prevention plans has saved them millions of dollars. They have found ways that they don't have to create wastes in the first place. They don't have to dispose of them in the sewers. It's turned out to be a win-win for a lot of industries.

So we're also encouraging these pollution prevention plans. We are going to have some of the cleanest sludges you've ever seen coming next June. I would challenge other municipalities to pass similar bylaws and work with their industries on pollution prevention planning. My personal preference would be to compost materials, but there are processes that work and many countries do very many different things.

I think there's a caution in the States with regulation 503. They do not certify their land. They certify their biosolids. In Canada we certify our land and our biosolids. Very often, I've heard a lot of misinformation from people: "Oh, these scary biosolids, blah, blah, blah. They're putting them on this land." They don't realize that they may be basing their information on stuff that's happened in the States that is very different from ours. We are not allowed to put biosolids on vegetables; in some cases, they are. It's different and I think that we could be proud, really, of what OMAFRA and the biosolids utilization committee have done here. I think often, when they look for the best regulations, they look at Ontario.



I've really enjoyed the corn and tomatoes this year. I think we're headed in the right direction and I do hope that the Nutrient Management Act begins to address some of the farm-related things and bring them in line with some of the regulations we already had for biosolids, because I think those have been working.

**The Chair:** Thank you, Ms Shinn. We appreciate your coming forward on behalf of the Safe Sewage Committee.

#### CITIZENS FOR A SAFE ENVIRONMENT

**The Chair:** Our next delegation I wish to call forward is Citizens for a Safe Environment.

**Mr Galt:** Chair, just a point of interest that the last delegate made, and that was some countries making farming illegal. Just bringing it forward, are they going to eat any more? I'm not questioning her comment; I just think it's interesting that that was brought out and how devastating, should that happen to any country we work with or any province here in Canada. I'm really very concerned about that kind of thing evolving down the road. It might be interesting to know the name of the country she was referring to, if maybe research could check that out.

1020

**Mr Avrum Fenson:** Sweden.

**The Chair:** Thank you for that.

Good morning. We have 15 minutes. We would ask you to give us your name for Hansard and please proceed.

**Ms Karen Buck:** I'm Karen Buck and I'm also from Toronto. We got caught in a time warp and were busy with meetings there.

I'll put my comments to you in concerns and recommendations. So that's how I will go through.

My first concern is that the intent of this proposed legislation regulation is to set and enforce clear new standards for all land-applied materials containing nutrients. Throughout all the literature I've read—the news release, the explanatory note and the proposed act—there is specific and in my opinion more appropriate reference to “land-applied materials containing nutrients” and “management of materials containing nutrients.” I'm saying that this Nutrient Management Act may be misnamed; maybe it should go back to land applications of materials containing nutrients. I think we're looking more to protecting the environment through the management of contaminants in the materials that contain nutrients.

My second concern is that the Lieutenant Governor in Council has broad powers to make regulations establishing standards respecting the management of materials containing nutrients, establishing standards respecting farm practices and other uses and the delegation of authority and prescriptive regulations and exemptions. If they have that much power, because we haven't seen the prescriptive regulation that goes along with what we've seen in the proposed act before us now, we should actually have a formal public consultation to look at both

parts of that legislation together to be sure it is correct in the end.

My third concern is that currently the land application guidelines require land receiving materials containing nutrients to be certified. In this case the land is awarded the certificate of approval. Is the current proposal before us suggesting that this practice will be eliminated in lieu of the certification of a person, licensing of a business or the approval of a nutrient management plan or strategy without the identification of the land in a certificate of approval?

My recommendation would be that if it is moving away from the land, that we definitely have a registry so that all the land applications are tracked and kept as records by the person doing the applications, and also in a registry.

There's a concern about the definitions in part I of the proposed act or as a preface to the particular sections of the proposed act. I feel there are a lot of things that are missing. I have a recommendation that we say we need “adverse effects” better spelled out, in particular the impairment of the natural environment, damage to any property, plant or animal and danger to the health or safety of any person. “Analysis” is missing, in particular chemical analyses. “Contaminant” is missing, in particular chemical contaminants or pathogenic contaminants. There's no definition of Lieutenant Governor in Council; no definition of what minimum quality would be; no definition of other operations, other persons and other uses; “technologies” is missing, in particular those currently thought to be appropriate technologies used for the management of materials containing nutrients, and also innovative technologies; “treatment” is missing, in particular perhaps to septage, which is untreated and so named in the act; types of lawns are missing; types of materials.

I have a concern: in my opinion, the requirement for management plans, strategies and the required regulation contained within the proposed act should not be based on the size of the operation or allow for exemption to regulation. I'm suggesting that everybody be included under the act, no matter what size it is.

I have a concern that the proposed act excludes a regular review of nutrient management plan strategies. I recommend that there be reviews of the plans and strategies and also of the licensing certification and approvals that could go into place.

With respect to a contravention of the proposed act's regulations, is there actually a record of the performance kept in a registry? How many contraventions of regulations would trigger a review of the licensing approvals and certification, and subsequent revoking of any of those?

In 28(3)(a) it talks about “other than the air,” where there's an order for preventive measures. I'm not sure that “other than the air” should be removed from that. I think we are concerned about the quality of the air, especially when it's related to land application.

I have a concern that the current land application guidelines are for agricultural land. This proposed act includes language as follows: "farm practices and other uses," "farmers and other persons," and "agricultural operation or other operation," but never does it identify any of the other uses, persons or other operations. I'd like those identified.

The recommendation would be that the proposed act include not only agricultural lands but other lands, uses, persons and operations and that these be spelled out; and that the regulations be developed not only for agricultural sites but also for sites such as golf courses that receive materials containing nutrients, and for sites that have been used commercially and industrially and would benefit from remediation through the use of materials containing nutrients.

My last concern: the protection of the environment, including the protection of the provincial water resource and the protection of public health, is a matter of regulating the contaminants, both chemical and pathogenic, not the nutrients in the land-applied materials containing nutrients. I'm asking that the act define contaminants, list contaminants and include an extensive monitoring, analysis and quality enforcement requirement for all materials being land-applied that contain nutrients, and that this be a part of the nutrient management plan and strategies.

**The Chair:** Thank you, Ms Buck. We have two minutes from each side for any comments or questions.

**Mr Peters:** Thank you very much, Ms Buck, for your presentation today. Part of the legislation is going to include the advisory committees or the community environmental response teams. The makeup of the committee is yet to be determined, and I wholeheartedly agree with your point—it's been made by virtually everybody—about input into the regulations by farm and non-farm individuals. It's been the common theme throughout these hearings.

As far as the advisory committees go—and they're going to play an important role in trying to mediate disputes on the ground at a local level—who would you envision as being a member of those local advisory committees?

1030

**Ms Buck:** A good cross-section of the people who would actually be involved in the whole process that this act is putting in place, like the land application. I heard somebody earlier saying that OMAFRA should be sitting on it—I would agree with that—the MOE. I think there should be scientists sitting there in case there's a dispute about a scientific position that somebody is taking or there's a question about it. Having people who have scientific knowledge would be invaluable. Certainly the farmers and the applicators, and if it's involving a biosolids program, then the municipality should be involved in that.

**Mr Peters:** How about a non-farm rural resident, somebody who is living in the rural community but may not necessarily be in the business of farming?

**Ms Buck:** If they have shown an interest and they're knowledgeable and willing to look at a situation and come up with a fair judgment, absolutely. I would think that the biggest advantage to the makeup of the committee would be somebody who is absolutely interested in the subject and will actually do work that is necessary and bring in ideas and bring in information. That's really crucial.

**The Chair:** Any further questions?

**Mr Beaubien:** Thank you very much for your presentation. In point 5, one of your concerns, I think you mentioned that everyone should be included in the legislation. I would tend to agree with you. However, the previous presenter mentioned that generators of nutrient material be required to reduce pathogens to a safe level. A pathogen is a pathogen. One will cause a disease. One will kill somebody. So I don't know what that means.

With regard to sewage treatment plants in the GTA, how many sewage treatment plants have you got? Are you aware or do you know?

**Ms Buck:** Yes.

**Mr Beaubien:** How many?

**Ms Buck:** We have three.

**Mr Beaubien:** Three. And how many have—

**Ms Buck:** Oh, we actually have four, and one is rather small.

**Mr Beaubien:** How many would have tertiary treatment facilities?

**Ms Buck:** None of them.

**Mr Beaubien:** None of them.

**Ms Buck:** Well, it depends what you call "tertiary treatment." I would call filtering "tertiary treatment," but I understand that if you use ferric chloride to precipitate phosphorus out of the secondary system, then that's also thought of as a tertiary treatment.

**Mr Beaubien:** I don't want to get into a technical debate here, but unless you have the full tertiary system with sand filters and ultraviolet light to treat your effluent—

**Ms Buck:** Right. That's what I would call "tertiary."

**Mr Beaubien:**—chances are that we can talk about the farm pathogens and the farm pollution, but I think we have to look at what municipalities—and even though I heard that Toronto probably has state of the art, and I would tend to disagree with that; that there are an awful lot of problems—

**Ms Buck:** I would tend to agree.

**Mr Beaubien:** Thank you.

**Ms Buck:** I think, yes, you're right. If you're exposed to the right pathogen at the right time, then you are susceptible to that. You can't do anything other than do the most careful things with any of the waste water or the biosolids or manures or anything else. We're looking for what will be most protective of the water and most protective of public health, and it's going to take all of us doing everything we can.

**The Chair:** I wish to thank you, Ms Buck, and Citizens for a Safe Environment.



RURAL ADVISORY COMMITTEE  
OF THE MUNICIPALITY OF BRIGHTON

**The Chair:** Our next delegation is the Rural Advisory Committee of the Municipality of Brighton. Good morning, everyone. Just have a seat. We'll ask you to give us your names for the Hansard recording. We have 15 minutes and hopefully time for questions.

**Ms Lucille Coyne:** My name is Lucille Coyne.

**Mr Kirby Hakkesteegt:** Kirby Hakkesteegt.

**Mr David Dorland:** My name is Dave Dorland. I'm chairman of this group.

I would like to thank the committee for giving us this opportunity to speak this morning on such an important piece of legislation that is going to greatly affect agriculture in Ontario.

The Rural Advisory Committee of the Municipality of Brighton is a committee of council made up of a broad cross-section of people involved in agriculture. Members of council, along with local farmers, sit on this committee. The farmers represent a very broad spectrum of the agricultural community, including dairy, pork, beef and poultry production, cash cropping and custom work.

The purpose of this committee is to provide council with input on issues that affect the rural portion of the municipality. We are here on behalf of both the municipality and the farming community. Suffice it to say that members of this committee have a sincere interest in the safety and well-being of residents in our municipality and are concerned stewards of the land.

With reluctance, we agree that in light of Walkerton there must be a need for some sort of nutrient management scheme. After reading the proposed Nutrient Management Act, 2001, several concerns have surfaced. These concerns fall on the very heels of two of the most disastrous crop years that Ontario has seen in quite some time.

This legislation will severely hamper if not destroy the efficiency, productivity and innovative ability of Ontario farmers, who, by and large, act in an environmentally responsible manner.

How can farmers be efficient if their operating and capital costs rise drastically because of the following possible requirements: new or upgraded livestock buildings; new, additional or upgraded storage facilities for manure; earthen barriers around barns, yards etc; new equipment to transport manure; new equipment to spread manure; new technologies to manage manure; educational courses to meet prescribed qualifications; examination fees; certification fees; hiring licensed operators to spread manure; hiring professionals to do geophysical studies; hiring lawyers to defend one's actions; exorbitant fines?

How can farmers be productive if their time is taken up in non-productive activities such as: time spent on paperwork to satisfy the requirements of this proposed act; production delays while waiting for approvals, orders, directives and appeals; time spent waiting for

licensed operators to show up during the busy planting season to spread manure?

Innovation comes from thousands of hard-working farmers, most of whom routinely incorporate responsible nutrient management in their day-to-day operations. How can farmers be innovative when it is the ministry which will determine what technologies, what equipment, what building structures etc will be allowed, prescribed and ordered?

Normal farming practices: how can farmers be assured of being allowed to carry on normal farming practices when article 62(1) of the proposed legislation amends section 2 of the Farming and Food Production Protection Act, 1998, by adding a provision that a normal farm practice does not include any practice that is inconsistent with a regulation made under the proposed act?

Deemed confirmation of order: if a farmer is ordered to undertake an action and the farmer appeals it to a director, the order is confirmed if the director takes no action in seven days. This is not a fair appeal process.

Access to farm properties: the act speaks of inspections without a warrant or court order to enter production facilities. Many producer groups have begun and/or are finalizing a programs such as an ISO 9000 or HACCP, restricting access to their premises for animal, health and food safety reasons in an attempt to keep the food that they are producing as safe as possible. Such inspections by officers under the act could endanger the integrity of the HACCP program.

1040

Lieutenant Governor in Council: we are concerned that cabinet can make changes to the regulations without debate or public input.

Administration and enforcement of the proposed act: if the proposed act proceeds, we would prefer that OMAFRA be the administrator. We are concerned that MOE does not have the same level of understanding, knowledge and expertise regarding nutrient management that OMAFRA has.

Closing comments: many of the issues covered by this proposed act are already covered by the Environmental Protection Act and the Ontario Water Resources Act. There will always be problems that cannot be solved through nutrient management. All our activities rely on Mother Nature and what she brings to us in any given year.

The proposed Nutrient Management Act, 2001, threatens the ability of the Ontario farmer to be efficient, productive and innovative. Ultimately, the costs associated with meeting the requirements of this proposed act threaten the very livelihood of the farming community. Is this proposed Nutrient Management Act really necessary?

**The Vice-Chair (Mr Carl DeFaria):** Thank you. We have approximately six minutes, so three minutes for each side.

**Mr Peters:** The first question is regarding enforcement. Your preference is for OMAFRA to be the enforcement agency. Do you feel that there could be a



perception of a potential conflict of interest, that OMAFRA would be siding on the side of the agricultural community, whereas MOE may look at the issue with a wider view?

**Mr Dorland:** No. I guess when we look at OMAFRA, they have a history of dealing with farmers and understanding the situations that evolve around that. For that reason, we feel they should be the leading administrator on this act. There are great concerns about MOE being more reactionary than actually dealing with what has happened or why it has happened.

**Mr Peters:** I'd like to pose your last question, your final comment, back to you: is the proposed Nutrient Management Act really necessary? If we didn't have this legislation in front of us right now, and you make comments on what is out there right now, do you feel legislation from other acts is sufficient right now? Why would you ask, "Is this necessary?" You're saying that everything is OK, or you would replace this act with something else?

**Mr Dorland:** No, I would say that there is legislation that is in place that will cover probably 99% of the problems that this act addresses. Maybe we need to critique some of this other legislation a little bit to help cover that. But on the whole, if these other two acts we referred to were enacted and acted on properly, I believe we wouldn't need this.

**Mr Peters:** What's your feeling on the spreading of biosolids and pulp and paper sludge on agricultural lands?

**Mr Dorland:** I have a great deal of concern. In a lot of cases, the farmers don't really know what's coming out of the cities. We hear of heavy metals and whatnot being spread on the land. There's also other contamination in sewage that comes out. People I've talked to who are involved with it say it depends dramatically on where it's coming from, what town it's coming from, how up-to-date their sewage processing plants are.

**Mr Galt:** Thank you for coming forward with your thoughts and ideas. I just wanted to make a couple of comments. You probably made the best list of costs of any presenter we've heard from. It certainly brings to our attention the possibility, but I did want to respond in that respect. This bill is rather open, and there has been some criticism because of that. But the basis of it is on prevention and on the farmer presenting how he would like to apply the conditioners and nutrients to his or her soils, and then that would be approved by OMAFRA staff. Then you have an approved plan and, as long as you stay within that, everybody in authority should be happy. It shouldn't be a problem. That's what it's based on.

To try and come out with specific regulations on soil types, temperatures, slope of land, slope of rock under land, how close to other buildings or other sensitive areas—a lot of that depends on slope etc. Putting it in specific, hard numbers, the government will never draw the line in the right place.

The normal farm practice comment: they have to be consistent or the courts are going to have a real field day. That's part of the reason that's in there. If we develop a regulation and you're outside of that regulation, the government can hardly recognize that as a normal farm practice. That's part of the thinking there.

**Mr Dorland:** I guess part of our concern there was what has been dubbed as a "normal farm practice" over the years. Through this order in council, if someone in cabinet decided they wanted to change what we have normally done and maybe said that everybody had to have liquid manure, that could come across as not being a normal farm practice. It is a normal farm practice, but it wouldn't be under the word of the legislation.

**Mr Galt:** I just wanted to stress as well that this is a bill about prevention and therefore is very different from a lot of other bills. Yes, there's enforcement in there, but the whole thing is about prevention.

The other comment I wanted to make on your very last statement was what we're hearing—at least I'm hearing in my interpretation from a lot of farm groups—is, "We would like to have these rules, this bill, these guidelines set out so that if we work within them, then we have a bit of protection and we're not going to have the finger pointed at us as farmers saying we're the bad guys, when in fact, 90%-plus are trying to do a good job. It's only a small percentage that have created any problems in the first place." Farmers are saying, "If we're within these guidelines, then we're doing a good job. Get off my back with those frivolous and vexatious comments."

**Mr Hakkesteegt:** What we're reading out of this is it's not dealing with those 10% you're talking about. It's dealing with 90% of us. I think you know as well yourself that there are a good many of us who have innovative, different ideas. I've even sat in on the two-day courses that OMAFRA has put out on the NMAN 2000 program. A lot of this stuff is already being done voluntarily. We have no other aspect to recoup some of those costs. Whereas other organizations this bill addresses have their public to recoup their costs from, we don't have that access.

**Mr Galt:** I expect in the end what you're going to find out is what an awful lot of farmers are doing—all you have to do is write it down and have OMAFRA approve it.

**Mr Hakkesteegt:** Pardon me?

**Mr Galt:** I expect what's going to end up happening here is what an awful lot of farmers with environmental farm plans etc do, which is put it down on paper and have it approved, and that's your nutrient management plan. I may be oversimplifying it, but for a very large percentage of farmers, they're doing an excellent job out there.

1050

**Ms Coyne:** We are doing an excellent job. This act is controlling to the extreme. I think it's really excessive; I think it's even oppressive. I really don't think it reflects what I think is the Common Sense Revolution, to be quite honest. You look at some of the costs here: hiring professionals to do geophysical studies. This area is all



hilly; the whole of Northumberland is hilly. Can you imagine—

**Mr Galt:** I'm going to respond with the issue we had with Trent River and the concern about the location of that barn. That's where it comes from, to know the geophysical conditions that would be under that barn, where the holding tank might have been and if it ruptures, what's going to happen. That's where the geophysical request comes in. They're not for a small family farm with 100 cows or 50 cows or that kind of thing. It's already in existence.

**Ms Coyne:** Yes, but I really believe that most farmers are a body of common sense. What we have coming down on our heads here with this particular proposed act is too much. There are acts in place, and if they are enforced, there really should be so few concerns about pollution from farmers and farm operators.

**Mr Hakkesteegt:** You still need to feed your nation.

**Mr Galt:** Yes.

**The Vice-Chair:** Thank you very much for your presentation.

#### TOWNSHIP OF RAMARA

**The Vice-Chair:** The next presenter is the township of Ramara. You have 15 minutes to make a presentation, and we would appreciate if you'd leave at least five minutes for questions, if that's possible.

**Mr Basil Clarke:** You'll have about 13 minutes for questions because I don't have a big speech. I didn't know what to expect. I'd like to thank the committee for having me here. If I make a fool of myself, nobody in my ward is here, so I'm fine.

I have a few concerns with the new bill. Sludge management—you've passed that over so many times, I don't think there's much more to repeat on it. Coming from a dairy farm myself—I've since retired from that and I'm into sheep—I always believed manure and sludge should be tilled into the soil. I was taught by my father, and we always felt that if you're going to put it on a hay crop, you need 10 inches minimum of growth. If you want to hold those nutrients and if runoff is the concern, then that should solve the problem. But these are just suggestions, and you've got a lot better suggestions.

Our big concern in Ramara township is we have large, large acres of waterfront. I don't see anything in there. Our big concern is that the same rules that apply to agriculture and commercial should apply to residential. Here are just a few short examples. As a farmer you require a licence to use herbicides and pesticides; as a landowner, you do not. There are products you can buy with 2,4-D, dicamba and mecoprop. I realize these are mixed in a lot weaker doses, but there is no limit to how much residential people can put on their house yards. If the real picture here is controlling pollution and runoff, then I think we need to look at the big picture—not just at agricultural lands, but everything. If there are going to be minimum setbacks on commercial fertilizers, it has got to

apply to the homeowner. If there is going to be, say, a limit on pounds per acres—some suggestions I've heard, without soil samples—it's got to apply to homeowners.

Farmers as a rule are very exact at applying fertilizers and herbicides. Farmers apply once a year; most homeowners do not. If a farmer doesn't have a licence, they have to hire somebody that does. I'm going to hash this over because it is our big concern, especially now that we've joined the Lake Simcoe conservation authority. Our big concern is about phosphorus in the lakes. We'd also like this issue handled. Most farmers will grumble about the rules you hand down and we'll accept them. But if they're going to be handed to us, they have to go to commercial and they have to go to residents. I know people who spent \$500 on a house yard—one tenth of an acre. You work that out and it's 700 pounds to the acre of herbicides and commercial fertilizers, right on the waterfront. This is ridiculous. It can't be let go.

How to enforce it? I've had a few suggestions. Maybe everybody has to have a card, including farmers: "This is how many acres I till." You take it in and they check out how much fertilizer you bought. Maybe in the case of a homeowner, it's just stamped. "There, you've stamped it this year, you can't buy any more fertilizer." Or maybe you'll just have licensed people do it, and if the farmers have to take a little makeshift day course, the same as they did for their chemicals, most of us would be fine with that.

It would sure solve the whole problem. All I have to say to the committee is, please don't forget the residents. It's one third farmers, one third commercial and one third residential that is polluting our waterways.

**The Vice-Chair:** We have approximately eight minutes left, so four minutes for each side.

**Mr Beaubien:** Thank you very much for your presentation. It was brief, but very interesting, I have to admit, and well balanced.

You heard the previous presenters when they mentioned that they find the act somewhat oppressive and probably too restrictive. Also, in St Thomas last week, we heard from the Middlesex Federation of Agriculture, and I'll read from their brief: that clauses 5(2)(b) and (c) require "Farmers and those operating equipment to meet qualifications and pass prescribed examinations." Their response is that this is overkill.

You've also heard the other group stating that they find the act somewhat oppressive. You heard some of the presenters—I don't know if you were in the audience earlier on this morning—with regard to Toronto having a state-of-the-art sewage treatment facility. I would tend to disagree with that somewhat, because there are not too many municipalities in Ontario that have what we call a tertiary system, with full sand filters along with ultra-violet light, to make sure that the effluent that gets out of the plant is basically potable water.

If you were sitting in my chair—I'm somewhat confused because I hear different messages here. What can you tell me? You had a very brief presentation. I think it



was very well balanced, but can you give an old guy like me some advice here?

**Mr Clarke:** I'm not sure exactly what you're asking. I know sludge, if that's the issue you want to tackle, has been a problem in our township. We have a very low-lying township, a lot of clay ground, and the biggest concern we have is policing it. I guess you could say the same with the farmers. You're hoping they're doing their job. I'm going to just hit the sludge because it's one that I have encountered a lot. We don't get the proper records as a council as to how many pounds per acre are being applied, and that's a concern.

We could say the same with farms, but being a farmer, I've always been deficient in manure. I never had enough to cover the acres that I wanted to cover for corn and that. I always had to rely on commercial fertilizers, over and above, so I'm not sure exactly what you need from me. I'm not sure what you're asking as far as—

**Mr Beaubien:** I'm somewhat confused with some of the messages I'm getting. For instance, you mention in your presentation that the sludge or the nutrient should be tilled into the soil. In some places they will inject it six inches into the soil.

**Mr Clarke:** Right.

**Mr Beaubien:** Some people say it should just be spread on the land. Some people don't seem to have too much concern with municipal sludge; they seem to have more concern with agricultural nutrient. Nutrient is nutrient, no matter where it comes from. A pathogen is a pathogen. Whether it comes from an animal or a human, it's a pathogen.

**Mr Clarke:** Exactly. I agree.

**Mr Beaubien:** Then the previous presenter says, "The act is somewhat oppressive." You say we should license people; the nutrient should be tilled into the land; we should control; we should enforce. You don't seem to think the act is too oppressive.

**Mr Clarke:** I guess coming from a farm, we do what we're told. I still feel that pathogens should be tilled into the ground to prevent runoff. If this is a concern, if we're concerned with E coli and wells, which seems to be something that comes up over and over—and they like to blame the farmer—then I think we also have to talk about coliform in the wells, which is sewage. If the agricultural will run off, so will the sludge, and our big concern is that the same rules apply. At this point, we're open for what rules you have to suggest. There are so many, how do you pick any one that's right? That's your job. Mine is to respond to you that the same rules apply to everybody.

**Mr Peters:** How do you respond to the advocates, the soil conservationists, the no-till people who have been practising no-till operations? Now we're going to consider ensuring the incorporation of the nutrients into the soils. You obviously are not a no-till advocate, but what is your response to those individuals who do practise no-till?

**Mr Clarke:** No-till has always been tricky when you're trying to get nutrients into the crop. In most cases

it's a liquid fertilizer that follows after the crop is up eight to 10 inches. In other cases—I did some no-till this year with granular fertilizer, commercial fertilizers, and no-till is not 100% no-till. You're still disturbing the ground with the planter as you're following your fertilizer. So it is in a way getting tilled into the soil. You're not just going out and, like I say, dropping this product and leaving it, say, on a hayfield, where, especially early in the spring, you want to get out before your hay is up. I see the sludge operators and farmers running too close to property lines, dropping it on. There's no cover for it. By three weeks of straight rain, now the crop's there. That, to me, is not acceptable.

**Mr Peters:** As a former dairy farmer and now as a sheep producer, one of the issues we're going to have to deal with is the potential for 365-day storage. What's your feeling on that?

1100

**Mr Clarke:** That is a tough one because, to be honest with you, I didn't have 365-day storage when I was a dairy producer. My manure storage did need a lot of work and that was one of the things I was looking at having to spend money on when I cut back. Sheep: obviously a lot less manure, and I have 365.

I don't know if you need 365; maybe eight months. It's only got to be stored during the winter months, at which time you can go out in early spring and get it on prior to your crops and till it in. So, no, I don't think 365 is necessary.

**Mr Peters:** I appreciate your making the comment that it's not just the agricultural community that's polluting the groundwater in this province. There are a lot of other problems.

As a smaller rural municipality with the majority of your residents, I am presuming, on a septic system—goodness knows the last time it was inspected or what kind of condition it's in and what it's leaching into the waters—for those individuals who have a septic system and call the honey guy in to come and pump out their system, what's going to happen in your municipality now? When the septage is outlawed and banned from spreading, five years down the road, what's going to happen to your residents? How are the companies that suck out their septic systems going to dispose—what's going to happen in your municipality with the banning of septage spreading?

**Mr Clarke:** It's a two-part answer. The first part is, we just passed a bill that we're going to start mandatory inspections of septic systems at random. We'll start on the waterfront and we're going to cover the whole township in the next few years, checking for faulty septic systems. That's one of the issues we did feel was important, and we did go after it.

Second, we're one of the lucky ones. We have a few plants in our area that are big enough that we could hold the septic from our area when tanks are plugged. We can pump it into, say, our Lagoon City, and there it can be treated. At this point, we've never had to spread sludge at Lagoon City. It's had the capacity and it seems to have a



good enough breakdown there that we've never had to remove the sludge. We've been one of the lucky ones, again, with a smaller municipality with a very large sewage plant. I can't speak down the road because that's ahead of us.

You see a lot of septic pumped needlessly. I haven't pumped mine in years. If you're using the right detergents, your septic should work for a very long period of time on its own. I realize, yes, people do like to pump their septic on a regular basis, a lot of the trouble being our antibacterial soaps, but that's a whole other discussion.

**Mrs Molinari:** Thank you very much for your presentation, Mr Clarke. You mentioned the importance of treating residential the same as farmers. A previous presenter talked about how important it is that when this legislation is enacted and passed, there is some financial assistance to the farmers, because of all the things that would need to be done to comply with this legislation. There is some discussion around the urban municipalities and the urban areas, that they are also going to need to fulfill certain requirements within the legislation. In your comments, when you talk about needing to have the residential and urban areas comply with some of the farmers and agricultural, would you also agree that if there is any financial assistance to the rural areas to comply with legislation, that same assistance should be given to those in the urban areas?

**Mr Clarke:** If it's regarding your sludge tanks in the urban areas, again, as a fellow said before, they can recoup that out of taxes spread over a larger base than one lone farmer stuck there having to repair his manure storage system. We can't recoup it. We can't up the price of our cattle; we can't up the price of our sheep to offset this.

Mostly what I'm concerned about in residential is applying the fertilizers. I don't think people need to recoup any money. My big concern is this commercial fertilizer landing on waterfront property. So, no, it's not a cost to the people; it just means you can't put as much on your house yard. I think we're talking two different issues. Our big concern is commercial fertilizers landing on residential areas, and there certainly isn't a cost to the people not being able to do it any more.

**Mrs Molinari:** Although there isn't a cost in one, there is a cost in the other. I guess what I'm looking at is, if there's a common theme and everyone should be treated the same, then abstractly, that would apply to the other as well.

**Mr Clarke:** That's right.

**Mrs Molinari:** So they can recoup from their taxes, but then the residents will have to pay taxes and in addition—

**Mr Clarke:** Right. At the same time there is an OSTAR grant out there that we are using to improve some of our systems. So the municipality has these grants already in place that they can go after. We're doing some of ours now for water, provided the money comes down. We haven't seen it yet.

**Mr Peters:** Haven't you been approved yet?

**Mr Clarke:** That was my next question. We haven't seen any yet. I know some of our neighbouring townships have. So the money is there, but what's the farmer going to reach for? Is there anything set aside for him that he has to get approved for? At one time you had—I forget what they called it.

**Mr Peters:** CURB.

**Mr Clarke:** Is that it? Years ago.

**Mr Peters:** A grant program.

**Mr Clarke:** Yes. Any more questions?

**The Vice-Chair:** Thank you, Mr Clarke, for your presentation.

## ONTARIO AGRI BUSINESS ASSOCIATION

**The Vice-Chair:** The next presenters are the Ontario Agri Business Association. Welcome to the committee. You have 15 minutes to make your presentation. We have been asking all presenters to leave at least five minutes for questioning. If you could state your names for the record for Hansard.

**Mr Mike Cooper:** My name is Mike Cooper and I'm chairman of the nutrient management committee of the Ontario Agri Business Association. My colleague is Ron Campbell, who is a staff member for the organization. I just did a brief outline.

The Ontario Agri Business Association represents the feed manufacturers, elevator operators and crop input groups in Ontario. We have some 550 members, and our primary responsibility is to service the farming community.

For our presentation I'm only going to hit the high points. We have made available a copy of the presentation for you.

I think we should point out that we appreciate the opportunity to be here and that we support some form of legislation. We recognize that there need to be some rules. My key point is that these rules have to be province-wide and they have to be the same everywhere or that's going to leave us with some problems.

The other thing I'd like to point out is that whatever rules are put in place, it's pretty important that Ontario production agriculture be allowed to take advantage of new technology and the economies of scale in order to remain competitive in an increasingly global marketplace and in providing consumers with high-quality, safe and inexpensive food. I might point out to this group of people that providing the public with inexpensive food is a primary target of governments and people like yourselves who are elected. I'm not sure I agree with that, but it seems to be the case.

Concerning the recommendations, the key to success in any program that you develop is going to be not in enforcement but by the implementation of nutrient management plans and the education and training of producers to meet these new environmental standards. We would like to strongly suggest to you that the Ministry of Agriculture, Food and Rural Affairs at this point in time is the



only government group that has the background knowledge, experience and network contacts to be able to do this. That will be the biggest part of the success of any program. I think we've proven that in production agriculture up to this point with things like the environmental farm plan and that kind of thing. We therefore suggest very strongly that they be the lead group. We recognize that they might not necessarily be the policing group. That probably should fall to MOE because they are currently in place doing that.

1110

The other thing we'd like to point out is that whatever rules are made, we will agree with the presentation that's already been made by the Ontario Cattlemen's Association, where regulations and/or the act must focus on risk reduction as opposed to risk elimination. Any attempt to completely eliminate risk will be a failure, in our opinion.

One of the other areas that we think is extremely important and may already be beyond your group is the fact that whatever legislation is put in place, that it be able to supersede municipal regulations. The common word in the countryside is that you folks have got this under control. I would personally question that, when the Supreme Court has already found in favour of the Hudson, Quebec, situation and virtually said municipalities have the right to make whatever rules they want to in spite of what provincial or federal governments are doing, provided those rules take into account the federal and provincial rules.

One of the other things I would point out that is extremely important from a farm standpoint is biosecurity. I don't think there's anybody in this room who won't recognize the fact that both BSE and hoof and mouth disease are very high concerns around the world and things like this are very easily spread on farms. Therefore, whoever is doing the policing part of it has to have some kinds of rules and regulations in place to make sure that farmers' biosecurity is not jeopardized.

Again, I'm just hitting the highlights in this proposal because you do have it all in front of you.

We would suggest that if you go to a third party for inspection or for approvals or certification, wherever you're going to go in that area, that those people have some agronomic background. If it goes to MOE, some work has to be done there because there aren't any people at MOE who have that experience.

Under local agricultural advisory committees our contention is—I know the question was asked here earlier about who should be on those—that they must include agricultural representation, that that representation should be balanced and that group should be the first point of contact. It may take some very difficult arranging to do that. But, again, we have proven over and over again in agriculture that if you can solve the problems locally, they're solved much better and more quickly.

We'd also suggest that whatever rules are put in place are soundly backed by scientific information. One of the things we're concerned about at this point in time is that there is not nearly enough research on which to base

regulations and that it perhaps is the government's responsibility, through OMAFRA or otherwise, to at least participate in developing that scientific background.

In closing, the Ontario Agri Business Association would like to thank the justice and social policy committee for the opportunity to make comments on this important legislation. The members of the Ontario Agri Business Association are committed to working with producers to ensure that environmental standards are met, again, provided those are based on sound scientific information.

Thank you very kindly.

**The Vice-Chair:** Thank you, Mr Cooper. We have approximately six minutes for questions, three minutes for each side.

**Mr Peters:** I think you raised a good point as far as the economic impact analysis is concerned. If we just listened to the presentation that was made this morning from the city of Kawartha Lakes—1,700 farms at an estimate of \$40,000 to \$50,000—we're talking about a lot of money, and that's just one county. I think it's a point well made as far as the economic analysis is concerned.

Your preference is for OMAFRA to take the lead in dealing with the review of nutrient management plans—the enforcement, the inspection. You feel that OMAFRA has a real role to play in this. Having witnessed, though, many changes in that ministry, many cuts, closure of field offices, some of the work that has been taking place at some of the agricultural colleges, having seen the cutbacks there, do you feel there are adequate resources in place right now for OMAFRA to take on this lead role? Or are further resources going to have to be put into OMAFRA's budget if they're going to play such a lead role in this legislation?

**Mr Cooper:** In my opinion, with whatever government agency is going to be involved, you're going to have to put people in place. None of them have enough people in place. Maybe I was not clear. I'm not suggesting that OMAFRA do the policing part of this. MOE are the environmental police. I wouldn't see us having a second agency doing that. I think OMAFRA's role is to be the lead and to develop the regulations, because we won't know what the impacts are of this until the regulations are in place. This was said earlier. Your legislation is very broad, and the proof will be in the pudding when you get the regulations on the ground.

You asked about the economics of the thing. I would point out to this committee, if no one else has up until this point in time, that if the farmer had control over what he gets for his produce, regardless of what it is, then it would be a simple matter of this being a public concern and you would increase the price of food. The farmer has two things against him in that direction, and as a result of those two things he has no control. Number one, this government and every government before it and probably every government after it sees cheap food as getting votes. I'm not sure that's correct. It's certainly not going to get mine.



The fact of life is, on the other hand, that the super-markets control the price of food in this province and every other province in this country. Unless you do something about that—which you're not likely to; they seem to have a whole lot more political clout than the agricultural community does—then the economics are going to play a role. The other side of the economics, if you like—and we're being realistic about this—is that what you're doing is helping to drive agriculture into the hands of corporations. I keep hearing you people saying you don't want that to happen, but this kind of thing lends itself very much in that direction. It will be the large operators who will be able to afford whatever the regulations are going to be, not the little guys. So if it's your intent—and I'm not criticizing. Whatever way you want to go, I would suggest you recognize that that will happen. If the large corporations get involved and the rules are too tight here, they will go somewhere else, and we will lose that part of the production in Ontario. We're very close to doing that in several areas as it is now.

**Mr Peters:** I'd like to go to your point on inspections and enforcement, talking about family-run farms. Unlike industrial operations, families live on the farms they work. What about my constituent who has an intensive livestock operation, a farrow-to-finish operation, with 1,200 to 1,500 animal units? They live on their farm. I guess the question is—it's one I've been grappling with, and there would probably be a hundred different opinions in this room—what is a family-run farm, in your opinion? You have these farrow-to-finish operations that are family-run and would be classified as an industrial-type operation, but it's the families that run them.

**Mr Cooper:** The fact of life is that the statistics will tell you that 98% of the farms in Ontario are family-owned and -operated, regardless of the size. Farms, like everything else, are getting larger, but by and large they're still family-operated units—just very large ones sometimes, but they are family units. When people ask that question, if you want to look at the ultimate: Mac Cuddy of Cuddy Farms is a farmer. Mac started farming. He built a tremendous business. But Mac Cuddy is a family farm. Not telling stories out of school, in my time of being involved in the agricultural business—I was first in the fertilizer business when I graduated in the 1960s; that's how old I am—one of my first tasks in the first company I went to work for was to go and collect a \$150 fertilizer bill from Mac Cuddy that was 90 days old and that he couldn't pay. So you can't criticize a person for building a business, but it's still a family farm. It is still owned by the Cuddy family, lock, stock and barrel.

1120

**Mrs Molinari:** Thank you, Mr Campbell and Mr Cooper, for your presentation. I am sure you can appreciate, as a committee as we're travelling the province and hearing presentations from various presenters, there are some common themes and yet others that are very much opposing. One of them is the whole issue around who should be responsible, the ministry that takes the lead: OMAFRA or the Ministry of the Environment. Of course

there is some merit in both arguments for which ministry should take the lead. I was pleased to hear you say, in response to Mr Peters's questions with this very issue, that the Ministry of the Environment could be the environmental police because their responsibility is environmental issues. As an individual on this committee, I would like at the end of it to come up with some kind of compromise where we're meeting the requirements of OMAFRA and the farmers and those who genuinely know the industry, and also meeting the requirements of the Ministry of the Environment. I hope we can come up with some sort of compromise.

On your comments on the regulations, we have been assured by the minister, and also Doug Galt, who is the parliamentary assistant to the minister, is here and has stated several times that there will be input into the regulations for this legislation. So there will be an opportunity for those to be written in such a way that would accommodate and would respond to some of the concerns that have been raised. It's interesting to hear from various presenters today, one who said that the bill is controlling and extreme and yet another who said that without the regulations you really can't tell the actual effects of the bill. Hopefully that will respond to some of the concerns there in the development of the regulations.

The other common theme has been the whole issue around which should supersede: would it be provincial legislation or municipal bylaws? You cited the Quebec situation. There have been varying views on that as well, because some municipalities say that their municipality is specific and you can't have provincial legislation that would accommodate the needs of that particular municipality. Would you see that there is a possibility of provincial legislation but some flexibility to allow municipalities to incorporate bylaws that would take into account some of the uniqueness in their own municipalities, or would you see, as you say specifically in your presentation, that provincial legislation supersedes municipal bylaws? I would appreciate your comments on that.

**Mr Cooper:** My comment would be this: theoretically that's fine. My experience tells me that local municipalities won't do that. The easiest way to deal with this problem, if it's a problem locally, is to just shut it off and make local bylaws that prevent farming or prevent the spread of manure or whatever. It looks like the Supreme Court will let municipalities do that. There's a difference between the theoretical approach to it and what really happens at the municipal level.

You're talking to a guy who lives in Flamborough. You think about that for a while. I've gone through this experience and I understand municipal councils. Also understand that I'm a guy who lives in the country on an acre of land. If I want to make a lot of noise locally I can outnumber the farmers in Flamborough 10 to 1. If I don't want somebody spreading manure on Saturday morning, I can raise a lot more people who have one acre of land in Flamborough, like I do, if I really want to get tough about it. I can put a whole lot more pressure on the local council, even if they are the city of Hamilton now, than



all the farmers in Flamborough can. I think we have to recognize that in whatever we do. Like everybody else, municipalities will take the easy route. That's what always happens.

**Mrs Molinari:** Thank you very much. You've made some very good points, a little different than what we've heard before, but certainly very effective.

**Mr Beaubien:** I have just a couple of comments. I kind of like what you mention about the education and training part, because it's probably cheaper to do it this way and we'd get better end results. Also, on the risk management issue, some people think that we can eliminate all the risk. I've worked in an industry for 25 years where we managed the risk. We cannot eliminate all the risk. No matter how well you think it out, somebody is going to come out or something will happen that you cannot underwrite for or do anything about. The other question I had I think you've already touched on with Mrs Molinari.

**Mr Cooper:** I would just comment that the general public, for whatever reason, want somebody to totally eliminate the risk. That's the easy way out for them too. It's the old story that you can get a lot of bacteria on food and one of the worst places that happens is at the kitchen counter. We're getting into times where the public does not seem to want to take any responsibility for their own well-being. They want somebody to legislate their safety in total, and we can't do that, not unless you want to be communist or something.

**Mr Beaubien:** Very good point.

**The Vice-Chair:** Thank you very much for your presentation today.

**Mr Cooper:** Thank you for giving us the opportunity.

PRINCE EDWARD COUNTY COUNCIL  
PRINCE EDWARD COUNTY  
AGRICULTURAL ADVISORY COMMITTEE

**The Vice-Chair:** The next presenters will be the Prince Edward County Council and the Prince Edward County Agricultural Advisory Committee. As I have mentioned to other presenters, you have 15 minutes. If you could leave the last five minutes for questioning that would be appreciated, and if you could state your name for the record.

**Mr Brian McComb:** My name is Brian McComb. I am the commissioner of planning for the county of Prince Edward. To my left is Michael Heuving, vice-chair of the county agricultural advisory committee and a chicken producer within the county. To my right is Robert Quaiff, county councillor and a representative of county council on the county agricultural advisory committee. I'll do the majority of the formal presentation, but we're all available for any questions that the committee would like to put to us.

Just to give you an idea of where the county of Prince Edward is, in case any of your members aren't familiar, we're south of Belleville and Trenton. We're a recently restructured municipality—January 1, 1998. We have a

population of 27,000 approximately. We are primarily a rural community and an island community, being almost surrounded by water.

The presentation I believe has been distributed to you or is available to you. I just wish to comment particularly on the bolded page 1, the front page, highlight those for you. The messages are going to be somewhat repetitive to what you've been hearing already today; nonetheless, we wish to emphasize those to you.

The first comment is that public input and consultation is required on the details of the regulations that are anticipated to implement this legislation prior to the enactment of the bill so that the farming community, the general public and the municipalities can better assess its implications. From the remark that I heard just prior to our presentation, we are glad to hear that there will be opportunities for the sharing of the drafts of the regulations. I believe that the sooner the process and timing of this is communicated to the public, the farmers and the municipalities, the better for all involved.

The county maintains its position that the Ministry of Agriculture, Food and Rural Affairs must provide the personnel, resources and finances required for the third party review of the nutrient management plans and that this responsibility should not be delegated.

The county is of the opinion that one consistent requirement should apply province-wide and that local bylaws, save and except for the purpose of forming local committees, be voided. As an explanation to this, I believe that there is merit in having consistent rules across the province about what constitutes an intensive farm, when a nutrient management plan is needed and what the requirements and contents of a nutrient management plan would be.

1130

In light of the potential of transmitting diseases, any provincial or delegated officer entering and inspecting any farmland or buildings must adhere to proper bio-security procedures. The liability of not doing so could be extreme.

Subsection 56(5) of the draft legislation, the "no personal liability" clause, should be amended to apply to anybody that the minister delegates to, including employees of municipalities.

The ministry should not delegate its powers and accountability relative to aquacultural and silvicultural operations to municipalities, as municipalities generally do not have the staffing, expertise and resources to deal with these matters appropriately. I make this comment particularly as it relates to aquacultural operations for the county of Prince Edward. Being surrounded by water, we have been exposed to the odd inquiry relative to fish farms. We don't have the equipment, staffing or expertise to deal with the issues that would be incumbent with an operation such as that.

A comprehensive funding support program such as healthy futures must be developed to assist all farmers with the remedial plans and works and financial implications associated with this act.



The other subject matter that I'd like to touch on and perhaps ask questions of the committee or put back to the committee is relative to the matter of the roles and responsibilities of the municipal or local agricultural advisory committees and how that regulation would be set up. Right now, under our municipal bylaw, the committee is charged with dealing with disputes related to the enforcement of a nutrient management bylaw only, not just any dispute that could occur between neighbours and a farmer. Under the proposed regulation, would a local committee deal with any dispute between neighbours and a farmer, and where do the roles and responsibilities of the local committee start and end, relative to the farm practices and food production board?

That concludes the formal remarks that we would like to put to the committee. We'd be pleased to try to respond to any questions that you may have.

**The Chair:** Thank you, gentlemen, for the presentation from Prince Edward county. We have five minutes for each party.

**Mr Peters:** I guess the first thing I'd like to ask you about is, your municipality already has its own agricultural nutrient management bylaw?

**Mr McComb:** Yes, we do.

**Mr Peters:** In that bylaw, you have set out the standards and provisions that you feel are most appropriate to your municipality, taking into account the fact that you're almost surrounded by water, and any other issues. What is your municipality's reaction going to be now that we're going to have province-wide standards and regulations? What if some of those province-wide standards and regulations don't come up to the level of your local standards and regulations that meet your local needs? How is Prince Edward county going to deal with that?

**Mr McComb:** I'll take the first crack at it on behalf of the group and look to the other members to provide their comments. I think part of the answer to that is the very first bullet, that without the regulations, without the details, it's hard for us to accurately respond to that question.

Second, in terms of the process that we took to derive the bylaw that we did, we took a draft of, in particular, Oxford county and then other municipalities that have taken the exercise before us. We formed a committee and then, for the most part, their membership became the county agricultural advisory committee. We took representatives from each of the key production parts of the farming community, together with the two members of the ratepayers' group, together with two members representing county council. We worked on a draft. We worked section by section, together with our solicitor towards the end of the process, taking something that we felt could be implemented and be sound in terms of interpreting, implementing and using.

In terms of taking the bylaw that we have versus having province-wide uniformity, our comment, as it's highlighted in our report, is we feel that there is a lot to be gained in having uniformity. Why should the definition of an intensive farm differ because we travel across

the bay into Quinte West, versus the county of Prince Edward? For the most part, the issues that we're dealing with through our bylaw should be uniform throughout the province. You shouldn't go from one part of the province to another and find that there's a total difference in what an intensive farm is, what's required within a nutrient management plan. I think clarity to the producers and clarity to the public would be achieved if there's uniformity.

**Mr Peters:** Not having those rules and regulations, we're just speculating, really, in many ways, and I appreciate your comments on the input. But as an example, what if Prince Edward county, because of your geographical location and concern about potential threats to your tourism industry and the waters around it, said, "We don't want to allow the spreading of biosolids in our municipality," but the provincial legislation would allow it? It's maybe very similar to the first question, but I use that as an example. What do you think should happen in a case like that, if it's something you don't want in your own backyard but the provincial legislation allows it?

**Mr Michael Heuving:** We've been talking to certain farm groups and they've all looked at this province-wide regulation as something favourable. I know that we've been able to do certain things with chicken farms in certain areas in Prince Edward county that over the fence are a lot easier to do. So I think if there were provincial guidelines saying that it's OK to spread biosolids in certain areas—as long as there's X number of acres, that's allowable—then the municipalities, if they decide that they should go forward and say that they shouldn't, then the municipality is going to have to come up with a plan as to where those biosolids should go, for one thing. But I don't know. I think that once the municipality produces these biosolids, I think they should get rid of it in their own municipality, on the acres that this purpose would be allowed for under the provincial guideline. I don't understand why a municipality would want to get rid of their biosolids in somebody else's municipality.

**Mr Peters:** It's like transporting garbage.

**Mr Heuving:** I can't see our county doing that, I guess.

**Mr Peters:** Last question: the advisory committees. I appreciate your point about a clear definition for the roles and responsibilities of the members of those committees. In your own experience, what would you recommend to us as far as having non-farm, rural residents as members of these local advisory committees? Good thing, bad thing?

**Mr Heuving:** We have two ratepayers now who are on our advisory committee. I think we need representation from all of the categories. Actually, in our county we have a representative from each livestock area as well. There's a chicken representative and a beef representative and so on. I think it's important to get across what everybody's view is when you're sitting at that table. I don't think it would be proper to eliminate one or two of these certain areas.



**Mr Galt:** Thank you for the presentation; welcome. You mentioned it was like a revelation this morning to hear that further consultations would be carried out. I just wanted to walk through a little bit, quickly, of what's been going on.

This started in the fall of 1999, the development of a green paper by staff that was then released, a green paper discussion paper. Mr Barrett and I then went across the province on consultations with the green paper, something somebody could look at and start talking about. We then presented that to the Minister of Agriculture at the beginning of April of last year. He then responded and released it in early July. Three ministers, Environment, Agriculture and Food, and Municipal Affairs and Housing, met in Guelph for an extended Saturday in late September. So there have been ongoing consultations and discussions throughout this with stakeholders. Staff made a circle around the province this summer explaining some of the things.

1140

I was at the Hastings ploughing match. There was an extensive presentation there on the direction in which we are going on nutrient management. Then this bill coming out as first reading—I think this is about the fourth bill our government has brought out since 1995—after first reading going out for hearings. Again, that is leaving it more open for change. After second reading, parties tend to get more entrenched. Absolutely, we will continue discussions. A lot of the consultations we have had have been very helpful in giving some direction to these regulations. We are not sitting there with a blank sheet of paper at this point in time. If you had been at the Hastings ploughing match and heard that presentation, you'd have heard some of the direction, some of the thinking on these regulations.

I just wanted to walk through that. This isn't just all of a sudden, "Hey, now we are going to have consultations." This has been extensive. Some of the farm groups are tired of the consultations. They're saying, "Get on with it," that we've over-consulted on it.

I have just a couple of other comments. I appreciate and support your idea of consistency across the province rather than ending up with patchwork pieces. That was a problem we had before. Biosecurity: dead on, very concerned about that, particularly because of my background as a veterinarian. Last—and I think some of the time we are kind of missing it and maybe I should be mentioning it more often at these hearings—healthy futures. Part of that is about clean water. There's \$90 million there. It does require alliances or partnerships to develop and then look at the rules that are there. Yes, already dollars have been released looking at this area. Just recently in western Ontario, Mr Barrett's area, last week I believe it was, some of those dollars were released for that purpose.

I do appreciate your comments, and I just wanted to, particularly on the consultation, come back with some of the things that we've been doing and to stress the fact that some of the farm leaders are saying, "Get on with it; you've almost over-consulted on it."

**Mr McComb:** We just offered what we did because we had the draft bill to review. Having gone through the process of drafting our bylaw, we had an appreciation that really a lot of the detail of how to assess the impact of what's coming down the pipe really isn't there until we get to look at the regulations. That's how we felt when we reviewed the draft bill.

**Mr Galt:** The other thing is that all the information I just went through is on OMAFRA Web site. You can go in and pull it down. When it comes to regulations, until the bill is passed, there's no authority for regulations. That doesn't say there's no reason not to be starting to work on them, but technically there's nothing. This is always a debate: how much in regulations, how much in the bill or act? Of course, down the road, those regulations can be changed even though you have them all in front right at the time the bill goes through. That's part of having regulations. It is more flexible.

**Mr McComb:** In my reading of the bill, we felt it was a fair statement to make that the real implications of this bill are probably going to be within those regulations. When I read the bill, it says that you have the authority to establish regulations (a)—I think you use up the alphabet. You have to go to those regulations to really know what the implications of this legislation are going to be.

**Mr Galt:** You're absolutely right.

**The Chair:** We wish to thank Prince Edward county for coming before the committee.

#### DRAIN POULTRY LTD

**The Chair:** Our next delegation is Drain Poultry Ltd. Good morning, sir. We have 15 minutes; if you wish to give us your name and proceed.

**Mr Vance Drain:** Vance Drain, Drain Poultry Ltd, Tweed, Ontario.

I thank you for giving me the opportunity to express my concerns about nutrient management programs.

Legislating the farmer out of business: the townships evolving from farming to residential land designations; fewer and fewer farmers mean fewer votes on rural affairs; mounting pressures from new residents to limit or control manure, fertilizer, herbicides and pesticides.

Private documents versus public: larger farms will be forced to submit plans that will be accessible to everyone, and the media could then publicize or sensationalize the plan details, making for a public relations nightmare for the farmer. Environmentalists or activists would use this report for ammunition against the farmer. There will be large legal bills to counter these problems. Unfortunately, the more the farmer opposes the media and courts on these issues, the more funding the activists seem to get.

Manure handling differences: I don't feel it is possible to make one set of rules that fairly apply to solids, liquids or composted manure. These three methods vary in storage requirements, spreading techniques, time of year and cost of operation. Consequently, I think there should be three sets of rules.



**Cost:** we spread solid manure on 20 to 30 farms per year, ranging from a few acres to 50 acres per farm. We get rid of our manure and the farmers save on their fertilizer cost. It's an old-fashioned win-win situation. It is my understanding that I would have to have a plan for each of the farms that I spread on. I am concerned that the time and cost to make 30 nutrient management plans would be very high.

**Conclusion:** a successful nutrient management plan must address environmental concerns, yet be a workable plan so that the farmer can continue to feed Canadians. It must respect the different ways manure is handled and be cost-effective enough to be useful.

Please do not underestimate the danger of a public document to our survival as farmers. Thank you.

**The Chair:** Thank you very much, Mr Drain. This leaves about five minutes for questions on each side.

**Mr Beaubien:** I'm not going to use five minutes, but I certainly have a comment and one question.

Thank you very much for your presentation this morning. The comment is, in your presentation you say, "Fewer and fewer farmers mean fewer votes on rural affairs." Especially as a member who represents a rural community, I'm quite well aware of that and I certainly would tend to agree with you on that.

When you talk about manure handling differences, you mention maybe three different sets of rules. Do you think the bill, whether it's legislated or regulated, should have provisions to provide education and training and licensing with regard to the spreading of manure?

**Mr Drain:** Yes, I think there should be training for it, or maybe education for it. But I think the three different types are completely different ballgames. What type you're using is different if it's a solid manure, if it's a liquid manure or if it's a composted product. Those three items are different items.

**Mr Beaubien:** Do you think that would lead to a need to license people to spread that manure?

**Mr Drain:** If somebody is going to go into it, I guess the one problem I have is that if you're going to license it, every farmer is going to have to have a licence just to take out 10 loads of manure on his manure spreader. I don't think the cost bears the use of that. If it's a commercial person who goes around and does it for 50 farms, yes, maybe.

**Mr Beaubien:** Yet you've heard—I don't know if you were in the audience this morning—with regard to pathogens, whether you're a small operator or a large operator, if it's not handled properly it could have a negative impact on the environment, on the safety and health of individuals, whether they're in a rural or urban community. You point to the fact that there is a different process, there are different kinds of manures. So by not licensing these people, don't you think that creates some type of a problem, some concerns?

1150

**Mr Drain:** But are we going to license everybody out in the country?

**Mr Beaubien:** Well, I'm asking. I don't know.

**Mr Drain:** I will agree that a person who has a business of spreading manure should have a licence, and they will likely do 50% of it.

My personal opinion is, if the farmer is doing it for himself, he's doing it in a very responsible way. Why would you want to throw away your nutrients and your pocketbook? There's no money in farming to start with today, so you're not going to throw your nutrient away that maybe would grow your crop.

**Mr Galt:** I'll just make a couple of comments. It's good to see you. Thanks very much for coming out and presenting. Your comment on concern about plan details being sensationalized: I see it. If corporations have some trade secrets, why shouldn't farmers be able to similarly have some? But it would be sort of registered on that spot of land where it's going to be applied. You're talking about the difficulty of one set of rules; that's why there's a plan. We're looking at the flexibility. So if you put forth a plan and then it gets approved and it relates to your 30 sites, as I see this, it's one plan but it's registered with those different pieces of property where you'd be spreading manure, so that that manure plus sewage sludge coming out of a big city can't all be applied to the same land.

My other comment relates to applicators. There's some thinking, similar to the pesticide applicators, on how they are trained and certified, the ones who are doing it commercially versus the local farmer; it's very, very different. Some of the applications of manure, some of the thinking is along that line—just to give you some direction of the thoughts and information we've been getting from consultations.

**Mr Drain:** You see, one of my big problems is—and I know I'm going to be a guy who has to do one, OK? But I have a real concern that it becomes public. That is a nightmare to farming in Ontario, that everybody who's in the nutrient management program becomes public. I'm not saying it will happen, but I believe it will happen, that somebody can sit on a keyboard somewhere in an office and type in a few letters, get your nutrient management plan and spend the time, if they want to, for sensationalism, because maybe that's where they make their money, sitting outside your place, you do some stupid little thing wrong and it gets sensationalized all over the place, and you really will go broke.

**Mr Peters:** Just on that point, this is an issue; this public-private document has come up a number of times. Perhaps if we could have legislative research, or even the freedom of information and protection of personal privacy officer, review this, I think it would be important for when we come back and start to deal with this at second and third readings, if somebody could explore this. Let's get an answer, because it has been raised since day one.

**The Chair:** Could we ask for that?

**Mr Fenson:** Yes.

**Mr Peters:** Great, thank you.

I kind of chuckled about fewer and fewer farmers means fewer votes etc. A large unnamed province-wide

agricultural organization spoke out very much in favour and was very supportive of the downsizing in the provincial Legislature. We won't name names as to who they were, but they were supportive of the downsize from 130 to 103.

I have a couple of questions. In the legislation, and we'll see it in the regulations, there may be a provision where you have to have eight months' or 12 months' storage. There may be a provision that you have to own a certain percentage of land. If those provisions were in place, how would that affect your own personal operation?

**Mr Drain:** It would be a lot smellier when it came time to dispose of manure, by about 10 times. Usually it's the smell that bothers the neighbours. Maybe you could spread commercial fertilizer right along their doorstep, they don't seem to mind that, but if you spread smelly manure, it does. If you store it over a month, it's 10 times worse, because it's anaerobic instead of aerobic, and once it does it, you can't get it back.

My philosophy has been—and we do handle it in a solid state and we use spreaders that bead it up to the size of a quarter. We have found that even in the wintertime we can go out and spread it on ice in a field and in two weeks, if you go down and take the ice out, it's on the ground. In the springtime, when there may be a puddle on that field, you will never see any colouring.

Consequently, in my opinion, if the land isn't cow-drained and it's sodded hay ground—now, I agree, I have to pick where I put it at that time of year, but if it's sodded hay ground, the nitrogen is looking for carbon, and it's sitting there in the springtime to clean the field of all the carbon for me and fertilize my hay land.

Consequently, the manure I take out of the barn and put in the spreader truck and put on the field today has about one tenth the smell of something that I leave in a barn or in a pile for weeks. Is this just creating another big nightmare in residential? When you put a farm together, people love to move next to you for some reason. I don't know why they do it, but they just seem to love to do this, so they can have a say, maybe, on the farm.

**Mr Peters:** What are you going to do if winter spreading is banned? Do you have the capabilities on your own farm—

**Mr Drain:** No. We have no storage.

**The Chair:** Thank you. We appreciate Drain Poultry Ltd coming before the committee.

PROPERTY PLANNING AND  
LAND USE COMMITTEE,  
NORTHUMBERLAND FEDERATION  
OF AGRICULTURE

**The Chair:** I wish to call forward our next delegation, the Northumberland Federation of Agriculture. Good morning, sir. We would ask for your name. We have 15 minutes.

**Mr John Boughen:** John Boughen. I'm president of the Northumberland Federation of Agriculture. I presume everyone has a copy of my presentation.

The Northumberland Federation of Agriculture, NFA, would like to thank you for this opportunity to provide input on the proposed Nutrient Management Act, Bill 81.

The Northumberland Federation of Agriculture is one of the county organizations of the Ontario Federation of Agriculture. NFA represents over 800 farm families in Northumberland county, which is bounded on the west by the border between the municipality of Port Hope and Durham region, in the east by the municipality of Quinte West and Hastings county, in the north by the border of Peterborough county and on the south by Lake Ontario. Within Quinte West, NFA also continues to represent the farmers of the former Murray township.

The property, planning and land use committee of the NFA has, over the last three years or so, had extensive experience on the subject of nutrient management. We have participated in the drafting of several municipal nutrient management bylaws by providing practical, common sense farming input to the formulation of these bylaws.

The Northumberland Federation of Agriculture has spoken out before to dismiss the perception that farmers are not good stewards of the land. The reality in fact is that farmers act responsibly in their use of the natural resources over which they have control. Farmers are the original environmentalists. Their livelihood depends on healthy soil to grow their crops, clean air for their animals to breathe and clean water for both their animals and their families to drink.

1200

To illustrate that farmers are good stewards of the land, in the last 15 years farmers have participated in programs such as land stewardship, land stewardship II, rural action plans, pesticide safety courses and certificates, best management practices and environmental farm plans.

It is important to note that legislation already exists under the Environmental Protection Act and the Ontario Water Resources Act to deal with violators of anti-pollution laws.

The property, planning and land use committee of the NFA has some serious concerns with Bill 81. Of most importance is that Bill 81 does not indicate a lead ministry. The NFA strongly recommends that the Ontario Ministry of Agriculture, Food and Rural Affairs, OMAFRA, be named as the lead ministry and that the enforcement expertise of the Ministry of the Environment, MOE, be obtained through the establishment of a special unit with OMAFRA that includes individuals seconded from MOE.

Provisions within the bill allow the province to delegate several responsibilities to organizations or persons outside of government. The NFA objects to this approach and recommends that the Nutrient Management Act be administered by OMAFRA with no outsourcing of tasks, be that as a director as in clause 2(1)(c), a provincial



officer as in clause 3(1)(c) or an analyst as in clause 4(1)(c).

Also, the NFA believes that the government of Ontario should not delegate power for the establishment, maintenance and operation of a registry as in clause 55(1)(a), the review of NMPs as in clause 55(1)(b) or the issuing, amending, suspending or revoking of certificates, licences and approvals as in clause 55(1)(c).

NFA objects to any form of fee structure as in section 57. This example of a government service will benefit all of society, and therefore everyone should share in the cost of administration. Farmers and agriculture are already under enough economic stress as it is, and we do not need this added cost to the business of farming. The NFA recommends that the government of Ontario develop reasonable projections of the cost to administer Bill 81 and then ensure that sufficient funds are available for this new initiative.

With regard to inspections and enforcement, the NFA has concerns when the need for verification results in periodic inspections on the farm. The legislation should establish a process that clearly lays out when a random inspection takes place and that is helpful to the farmer in providing an indication of what aspects of the farming operation are in compliance with the standards and what aspects are not. The intent at this stage should not be punitive.

The NFA recommends that the issuing of an order should be reserved for those individuals who refuse to correct a situation within a reasonable length of time, as determined by a follow-up visit.

Also, the NFA is concerned for all agricultural producers, particularly in those commodities where a HACCP, hazard analysis critical control points, system has been introduced for biosecurity. For inspections on the farm, strict protocols must be established to ensure biosecurity requirements are met. The NFA recommends that the need for biosecurity protocols, and the need for them to be established in consultation with farm organizations, must be entrenched in the legislation and not dealt with as a regulation.

The NFA is also concerned that the Lieutenant Governor in Council "may" provide, in subsection 5(2), for the establishment of local nutrient management advisory committees. The NFA recommends that this be changed to "shall" rather than "may" provide for their establishment. Further, the NFA recommends that such committees be composed of individuals who have a registered farm business.

Closing comments: As members of the standing committee on justice and social policy, you can see by this presentation from the property, planning and land use committee of the NFA that there is much work to be done to Bill 81 before it is acceptable to the NFA and to the farming community. Bill 81, as proposed in its present form, will not allow farmers to manage their farms effectively in an efficient, productive manner. Committee members, with your findings and report to the Legislature from these public hearings, you must ensure that this

proposed Bill 81 is changed so that it will not be a financial burden on farmers. You must work to ensure that farmers are free from arbitrary legal constraints, thus allowing the family farm to survive and go on into the future providing safe, high-quality food for all the people of Ontario and beyond our borders. Thank you.

**The Chair:** We have three minutes for each party.

**Mr Peters:** On page 2 you recommend that the advisory committees be composed of individuals who have a registered farm business. I agree with the word "shall" rather than "may." I think that's of extreme importance. But the advisory committees are going to be really important in dealing with local disputes and dispute resolution. What is the NFA's position on having representatives from the non-farm rural community on the advisory committees?

**Mr Boughen:** I should clarify that when I refer in the presentation to the property, planning and land use committee of the NFA, of which I am chair, we prepared this presentation about a week and a half ago. This has not gone through the full NFA board, but there is nothing in here that we haven't gone over in the past or that is controversial.

**Mr Peters:** Even if it is your personal opinion, that's fine.

**Mr Boughen:** Just to clarify that. I look upon it—and I think the board does too—that it is much better as a peer situation. That means farmers on these agriculture advisory committees. That's what we've always stressed in the past when this has come up. That's our preference. It is much better with these committees in place that it is farmers. If there is a complaint from, say, a non-farmer, and it can happen from farmers too, that they go out, and it is actually people on those committees who go out, and go to this farm and look over the situation, because it is much better for a farmer to go than a non-farmer, just because of the peer situation. Farmers do understand much more about agriculture, because it is our business. This is what we do. We have the experience, the talent and the expertise in matters like that when we are going out and sometimes dealing with our neighbours.

**Mr Peters:** Do you have a position on the spreading of biosolid wastes from waste water treatment plants or wastes from pulp and paper operations? Do you have any feelings or preferences on the spreading of those materials on agricultural lands?

**Mr Boughen:** Are you asking me personally again?

**Mr Peters:** Personally is fine, yes.

**Mr Boughen:** Because I'm also president of the NFA and I'm here representing the land use committee, plus overall I'm representing all kinds of farmers in Northumberland—

**Mr Peters:** We will make sure it is on Hansard that this is your personal opinion.

1210

**Mr Boughen:** Certainly in the township I come from—or I should say the municipality now, because we've been amalgamated—we do have a bylaw that does control sludge from the municipality of Port Hope, with



which we are now combined. That came out of the situation with Eldorado or Cameco, which had radioactive waste which got into the sewage sludge. There is provision within a bylaw to handle that. It has to go through a process so that it comes out and is looked after, administered by—I'm not sure—certainly the Ministry of the Environment is in there and probably Ag and Food too.

On our farm, on a personal basis, no, we do not use it. I don't think we will. We have been vegetable growers in the past; perhaps in the future we will be again. But certainly to grow peas and sweet corn, we weren't allowed to use biosolids on our land.

I'm concerned personally with the other, heavy metals, which we wouldn't want to introduce to our land, because like most farmers our land is our livelihood. It is precious to us. It has been in our family. I'm the fourth generation in our township. As I said and demonstrated earlier, we are good stewards of the land, and we have not harmed the environment in the past. We are looking at a whole different thing with this process now. Partly it scares me, on a personal level, what the government might be thinking of doing to us.

**Mr Galt:** Thank you, John, for coming. Good to see you again and thanks for the presentation. I have three kind of quick questions. First, you're suggesting the enforcement "be obtained through the establishment of a special unit with OMAFRA that includes individuals seconded from MOE." What if that was the other way around: it was agricultural people, people with a livestock background, being seconded into MOE as enforcement, rather than the way you're suggesting, but they have people with an understanding of agriculture?

**Mr Boughen:** I would still rather that it was from OMAFRA.

**Mr Galt:** Just curious on your response.

**Mr Boughen:** Do you want me to add any more?

**Mr Galt:** You mentioned about fees, "Don't lay anything more on us." Would you include a new facility, more than 450 livestock units, like a 3,000-unit sow operation, wanting to set up; would you say that should be free of fees as well?

**Mr Boughen:** Yes. When it comes to the fee structure within this proposed bill, I think we have to treat all farmers the same, whether they're small or big. We are basically ourselves smaller farmers. We are certainly under the 150 animal units. In our own township, we do have a nutrient management bylaw, but we are not included in it, because we are under the 150 animal units. There was a proposal at one time, when they were drafting that bylaw, to license farmers. I fought very hard to keep that out of our bylaw, because it leads to all kinds of problems. The OFA backed me at the time. It was just that type of overbearing situation, your cost; you wouldn't even be able to get financing for farms if there was a system within our municipal bylaws for licensing.

**Mr Galt:** My last question has to do with the advisory group. I'll give you a wee bit of background on the reason for the question. As veterinarians, we thought it

was going to be disastrous when lay people got to sit on the College of Veterinarians of Ontario. But I see laity sitting on medical groups, physicians, dentists, nurses and so on. Often the laity are more supportive of the profession than are the professionals, because the professionals don't want anything to do with somebody who's mistreating their patient or whatever. When you use that thinking—and you're saying here, "be composed of individuals who have a registered farm business"—would you see that some other people, non-farm people, should sit on that advisory committee?

**Mr Boughen:** No, because we stated that we think they should have a registered farm business. I explained earlier about the peer situation. More and more I'm seeing, even in our township—and I'm not prejudiced in any way—that city people, urban people, are coming out, and a lot of them really just want to make our countryside a park. I mentioned Hope township's nutrient management earlier. They've put an interim control bylaw in place. We worked for over a year for the final nutrient management bylaw. I was appointed on that steering committee of Hope township from our Northumberland federation. Really, a lot of the time I went through a year of hell because of the people who were on it who weren't farmers and didn't understand. They've got an agenda, and they just try to make things very difficult. It's not their money that might be affected, or their investment in their farms; it's ours.

I think we farmers deserve more than what we've been getting in the past and are maybe going to get in the future. When you get into the regulations, we don't know what those are yet. We have some ideas, because everyone has talked about it. But when it gets into that and the cost of this, and especially when you get into the difference between solid manure and liquid manure, with liquid manure, there's no question; for farmers up till now it has been voluntary. Liquid manure, there's no question, you have a winter storage facilities. You keep talking about facilities. Solid manure is different. We don't have a manure storage facility. Our manure storage facility maybe is in our barns till we clean them out. Perhaps it goes out to the field if we have time and times are suitable, or it goes out in a pile in the yard.

If we get into having to build manure storage facilities for our farm—and we have two barns, with a third barn that we have cattle in sometimes—we might as well stop farming today, because we will not be able to afford this. I estimate on our farm it would probably cost a minimum of \$40,000 for each barn. I'm not kidding on that, because once you start putting in cement, these things take a lot of cement. We use solid manure; we use a lot of straw and there's a lot of bulk. It would take a lot of room to put one of these in place. I see that in our type of farming, which is still predominantly in use in Ontario, or what farmers are, that will drive those farmers out, and that's not fair. It's not fair to them.

As I said a minute ago, all farmers should be treated the same, whether they're big or small. We have gotten



bigger over the last 50 years, but we're not really big compared to some farms now.

**The Chair:** I wish to thank the Northumberland Federation of Agriculture for coming before the committee.

We will now take a break, and this committee will reconvene at 1 pm.

*The committee recessed from 1218 to 1301.*

**The Chair:** I wish to welcome people back to this afternoon's portion of the standing committee on justice and social policy. We are meeting Thursday afternoon, September 20, here in Parkway Place in Peterborough.

### COUNTY REGIONAL ENVIRONMENTAL EVALUATION KO-ALITION

**The Chair:** We have the brief distributed and I would ask for the 1 o'clock delegation, the County Regional Environmental Evaluation Ko-alition, to come forward. We have 15 minutes and we are asking delegations to subtract five minutes for any comments, questions or discussion. We will ask for your names please for the Hansard recording.

**Ms Linda Roberts:** My name is Linda Roberts. I am the chairperson of CREEK, the County Regional Environmental Evaluation Ko-alition. Beside me is Rob Legge, a member of CREEK. I would like to thank you for allowing us this opportunity to share our concerns. We are not a formal advocacy group. I understand that over the period of your hearings, you've heard from a lot of experts. None of us are experts. None of us have extensive experience in environmental issues. We have no paid staff and we have no funding. We are just a group of citizens who are very concerned about the water and the environment in Prince Edward county.

I'd like to give you some background before dealing with the legislation itself. You heard a little this morning about the geographic location and makeup of Prince Edward county. It is rather appropriate that that was this morning as well. I don't know that you can see this from where you are, but this is the eastern tip of Prince Edward county. This is where we are. This is Adolphus Reach in the north. This is Lake Ontario in the south. This is Prinyer's Cove, which is a very popular boat anchoring spot. All of these are residences except for this area, which is where we have an intensive livestock operation. It is somewhere between two and three kilometres across from Adolphus Reach to Lake Ontario at this point. Just for your information, based on a comment that was made this morning, the residential community was already established before the intensive livestock operation moved in. We did not move in and try to change things. Also on this map you will see a large W. That W signifies a provincially significant environmentally protected wetland, and there's marsh in there. Right in that same area, as I've explained, we have an intensive livestock operation of hogs. The operation has about 2,700 pigs.

Although our municipality has a nutrient management bylaw, it is one of the least stringent in the province. The operator of this intensive livestock operation is exempted anyway because he was already in existence before the enactment of the bylaw. He spreads manure approximately every 120 days. In December, a test taken of water flowing into Lake Ontario, following an application of liquid manure, showed an E coli count of 1,500 and a fecal coliform count of 7,900. Therefore, it was with great interest that we anticipated this legislation.

We have a number of concerns about the legislation, as outlined in our written submission, and I would just like to highlight some of them now. I'll try to do this quickly. Ideally, obviously, we would like a moratorium on intensive livestock operations. The Netherlands are paying their intensive livestock operators to leave, and we're inviting them here. Various states in our neighbour south of us are banning intensive livestock operations. I have a question: do we place such a small value on this beautiful province? However, we realize that this is not an option being considered, so we will deal with the bill.

Our first concern is the fact that it is an omnibus bill. We do not believe that this bill should cover all sizes of farms and all the other issues it tries to deal with. It is too diverse. We believe—it is in the submission—what we would like to see is that we follow the lead of the United States, where the Environmental Protection Agency has recently announced that large agricultural operations will be required to have permits under the national pollutant discharges elimination system as factories do, because these ILOs are factories, not farms. We would like to see this legislation limit itself to intensive livestock operations.

We are glad that we will have a chance to have input into the regulations. I was glad to hear that this morning. We are concerned, however, that when the regulations have been drafted, they will be dealt with as an order in council and will not go through the democratic process. We feel this is an abrogation of democracy. We feel that there should be allowance for debate in the Legislature.

The bill recommends geological assessments. We would rather see hydrogeological assessments. According to Gord Miller, the Environmental Commissioner, most of Ontario's environmental problems can be traced to the failure of provincial ministries to approach environmental protection from an ecosystem perspective. The soil map of Prince Edward county shows that the area affected is a thin layer of topsoil over clay and fractured limestone. Residents in this area rely on private wells, drilled, dug, and shore wells, and we are all concerned about the long-term sustainability of our drinking water. We are concerned that in the legislation there is no involvement of the Ministry of Health. Our area is popular with boaters and cottagers and many people like to swim, but there is no mechanism by which the water is tested and postings made when it is unsafe for swimming.

In terms of local committees to administer the legislation, we have a real concern. We heard this morning

that most of the delegations would like to see those committees completely made up of farmers, with very little representation from the community. We do not believe that that kind of a committee has the political will to deal with the concerns of the general public.

There is no requirement in the legislation for detailed records and regular auditing by provincial officials. We believe that without that kind of auditing, there would be very little incentive for the regulations to be followed. We feel that it should say a provincial officer "shall" have the power to check the operations on a regular, prescribed basis.

In this legislation it says that the provincial legislation should override local bylaws. The Supreme Court of Canada, as we heard this morning, in the case involving the use of pesticides in Huron, Quebec, stated that "local governments must address the emerging or changing issues in their community." The court recognized the legitimacy of local jurisdiction over matters which are specific to the area. As I have pointed out, the area about which we are concerned is most inappropriate for intensive livestock operations. We would like to believe, unlikely as it may be, that we could influence the local decision-makers.

I would like to address the term "normal farm practices." This term is used in the legislation, but, according to research, there is no real definition of "normal farm practices." Really, it refers to the "accepted customs" of farming. The test of "normal," in effect, allows something to pass that has been allowed to establish itself over time, no matter how harmful it may be. A better alternative would be the phrase "environmentally responsible farm practices."

1310

Finally, I feel it's imperative that there be ample resources and funding from the province in two areas, first of all, for the cost of improvements. I understand this is an onerous task for the farmers themselves. Quebec provides funding of approximately 70% of the cost of improvements, and some areas in New York state receive 100% funding up to a maximum of \$100,000. We would also like to see funding into research into alternative technologies. There is considerable research of alternatives to the spreading of untreated liquid manure, and this government, if it wants ILOs in the province, should show leadership in this area.

Ontario is not alone in struggling with proper regulation of intensive livestock operations. Manitoba, as well as many other areas, has been through this process, and I would like to share with you some of their recommendations.

The government focus substantially increased resources on the intensive livestock industry in Manitoba to provide analysis, guidance, inspection, monitoring, enforcement and technological assistance. The capability to undertake comprehensive analysis of the potential impact of new or expanded ILOs upon both local and larger area environments should be enhanced immediately. New and expanding ILOs should require formal approval by

both the host municipality and the province before construction is allowed to begin. Water quality monitoring must be greatly increased. There must be a strong research and development emphasis on the monitoring of pathogens and the mechanisms by which they are transferred from animals to humans.

Finally, also from the Manitoba study, the following quotation: "The government is seen as the custodian of the public interest in the environment. The public needs to be confident that the government is ensuring that things are being done right, and must have access to information to be assured of this."

I thank you very much for this opportunity.

**The Chair:** Thank you very much. We have about a minute and a half for questions. I'll start with the Liberal Party.

**Mr Peters:** Perhaps I'll pose both questions very quickly. On page 3 of your report, you talk about "nutrient application within, at the minimum, two miles of a residential area." I was wondering if you could define a "residential area." Does that mean one house or a municipality? What do you mean by that? Secondly, toward the end of your presentation, you talk about the case of the cost of restoration in the Deloro mine. Are you advocating here for what I would call a perpetual care fund, which cemeteries have? A number of new landfills now have built in a care fund. So if you could define what you mean by that point and "residential area," please.

**Ms Roberts:** Certainly. "Residential area" was an arbitrary choice of term, the reason being the concern of the proximity here to the residential area. There are a number of houses, I would say, in a residential area, not just one residence.

In terms of the restitution of the Deloro mine, I think perhaps that I should have addressed it more clearly. The operators of intensive livestock operations perhaps should have insurance coverage to cover any damage they do to the environment. What's ending up is that these industries are coming in, they are taking their profits, they are leaving and they're leaving the taxpayers to pick up the tab.

**The Chair:** I'll go to Dr Galt, a minute and a half.

**Mr Galt:** Yes, I am very familiar with Prinyer's Cove, have been there many times, many years ago. I grew up just across the lake from there, where the Lennox generating station sits.

**Ms Roberts:** Oh, right. We can see that from our house.

**Mr Galt:** I appreciate the frustration you have, knowing a veterinarian with some large-animal practice who has a cottage in that area. When he complains about the odour, there must be something significant, because veterinarians in large-animal practice can tolerate an awful lot of livestock odours.

I have a philosophy that whoever presents should have to stay for the whole day and hear all the other presentations. I wish the people presenting just before



lunch were hearing what you are saying now and you were hearing what they said.

**Ms Roberts:** I did hear it.

**Mr Galt:** I have that philosophy. They should have to come at 9 o'clock. If they're not here at 9 o'clock when we start, they can't present. That's just a little personal one on my part.

Your comment on regulations, to get a little more serious here: they've never been the type of thing that comes before debate in the Legislature. It is bills and so forth. Your point is well taken. Certainly—and I've explained it to some of the others—there have been very extensive consultations relating to the bill. A lot of that information will be used in regulation, and there will be considerably more consultation as it relates to regulations.

I loved your term "environmentally responsible farm practices" rather than "normal farm practices." It is kind of a neat way to look at it. The question I have for you: you expressed concern, and we've heard it many other times, about organisms being spread from animals to people because of this. Very few people have commented on human organisms being spread to humans. The biggest enemy of the pig is another pig, of course, spreading their own disease. The same is true of humans. People don't seem to be commenting on that as it relates to sludge, sanitary sludge, biosolids, whatever; we hear it all animals to humans. Why are we taking that slant of concern and not the other?

**Ms Roberts:** I'm not saying that the spread from human to human is not a concern, but our organization was formed as a response to intensive livestock operations, so I tried to confine my comments to that. We are very concerned also about the spreading of sludge.

**The Chair:** We wish to thank you and appreciate CREEK coming before the standing committee.

#### TOWNSHIP OF STONE MILLS

**The Chair:** The next delegation I wish to call forward is the township of Stone Mills. Good afternoon, sir. We will get your name for the Hansard recording and then we have 15 minutes.

**Mr James Macdonald:** My name is Jim Macdonald and I'm the reeve of the township of Stone Mills. I'd like to ask the chairman of our agricultural committee to come up to the table and join me for the presentation and for the questions after. Robert Clancey is our chairman of the agricultural committee.

On behalf of the members of council for the township of Stone Mills, that being the former township of Camden East, the former township of Sheffield and the former village of Newburgh, I would like to express appreciation for the opportunity to meet with you and discuss concerns regarding intensive agricultural operations within our community.

The township of Stone Mills is located in eastern Ontario and is made up largely of a rural and primarily agricultural tax base. We maintain a population of about

7,000 and are very fortunate to have a number of rivers, lakes and streams running through our municipality. Taking this into account, the township is requesting that consideration be given to increasing the MDS calculations as they pertain to the proximity to watercourses. The former township of Sheffield borders on the tip of the Canadian Shield. The majority of our very proud farming community depends on soil which in many cases is relatively thin over fractured bedrock.

Like other Ontario municipalities there is a trend toward larger farms, with some operations bordering on what many refer to as "factory farms" moving into our area. As agricultural operations intensify in order to increase productivity and viability, there is a high level of concern regarding their impacts on the environment. The potential for groundwater and surface contamination, persistent odour, pathogen release and groundwater depletion are very real concerns, particularly for non-farm rural neighbours who fear the possibility of a diminished quality of life and reduction in their property values. The issue of intensive agricultural operations is a very complex and sensitive one. Based on experience within this municipality, it is evident that action needs to be taken and that the provincial government should actively pursue remedies.

When it became evident to the township of Stone Mills the potential impact these intensive farms could have on our municipality, an agricultural committee was appointed and, with the assistance of a solicitor and the township's planner, an intensive livestock farm bylaw was passed. I brought copies of our bylaw today.

1320

The applicant must adhere to a nutrient management plan, must provide a hydro-g analysis and must provide a site plan for the proposed operation. The site plan, although not fully supported by OMAFRA, is essential in our opinion to promote planning for the future and making sure proper procedures have been followed, which will benefit all residents of the municipality.

The requirements of our intensive livestock farm bylaw must meet the satisfaction of a third party review. As the township does not have a qualified person on staff, consultants who have expertise in the related fields have been engaged to examine the submissions presented.

Compliance with this bylaw has produced numerous challenges, and on two occasions the township has appeared before the farm practices review board. To date, our costs regarding this are approximately \$100,000 and are continuing to rise. There's a summary sheet on the back that kind of outlines our expenses. It is evident that assistance to deal with matters of such importance is a priority for our municipality.

In order to clarify the obligations which are to be met, the proposed new legislation must be enacted as soon as possible. Consistency must be met throughout Ontario. Qualified experts must undertake the administration and enforcement. Adequate financial resources must be made available. It is imperative that wasteful duplication does

not occur and that cost efficiencies and effectiveness are maximized through a unit devoted to the enforcement of agricultural standards.

This legislation must ensure that the farm practices protection board is independent of all parties, including the Ministry of Agriculture, Food and Rural Affairs, and exercises its responsibilities without prejudice in all cases.

The legislation must ensure that financial assistance and incentives are available to address environmental improvements, which have definite benefits for society as a whole. Neither the agricultural community nor property taxpayers within rural municipalities should be forced to bear the burden of changes which minimize environmental risk for all.

Once again, thank you for the opportunity to meet with you and express our views. We will address any questions.

**The Chair:** We've got a bit over three minutes for each party. We'll now begin with the PC side.

**Mr Beaubien:** I've got a quick one; I won't take the three minutes.

On the second or third page of your presentation, you mention that "consistency must be met throughout Ontario." But in the second paragraph on the second page it says: "The majority of our very proud farming community depends on soil which in many cases is relatively thin over fractured bedrock." If the standards must be consistent across the province, and we've heard different presenters mention the different types of soil we have across the province—you mentioned that you have a thin layer of soil over fractured bedrock—does that create some concerns if we are to have some provincial standards that are applied uniformly across the province?

**Mr Macdonald:** I guess we all know that the land in eastern Ontario and in our area is substantially different from western Ontario, where the land is deeper. I don't know that you have to get into that particular part of it to separate the two. Bob, would you like to address that?

**Mr Robert Clancey:** To answer your question, we all know that the land varies from Toronto to our part of the province, and the capability of the land to accept nutrients, to accept a large operation, is entirely different. We are not so fortunate. In some places we have a very thin covering of soil, limestone, bedrock, and we look at that saturation of product that goes on the land and how it's going to affect the water below. That's why we are very adamant on a hydro-g, a site plan and so on and so forth to address the application, the size and so forth.

**Mr Beaubien:** So that's how you would address, say, the different soil conditions: through the site plan and do it with the township?

**Mr Clancey:** Yes.

**Mr Macdonald:** That's why we feel a site plan is of the utmost importance.

**Mr Peters:** One of the issues we're going to have to deal with is land ownership. You've just presented us with the fourth figure today. We've heard that one municipality has 25% land ownership, another municipality

has 30% land ownership, another has 50% and now you're at 40%. As we develop these province-wide standards, if it's 30%, then it's going to be interesting to see how you will react when your own goal is 40%. That's one of the issues.

The site plan is an interesting point that you raise. It's only the second time I've heard that raised. As a former municipal politician, I know how effective a site plan control committee can be in dealing with a lot of issues.

One thing you didn't touch on, and I wonder if you have any comments on it, is the spreading of biosolids or pulp and paper sludge. Is this an issue in your municipality? If it is, how should we be addressing that from a provincial standpoint?

**Mr Macdonald:** We do have a paper mill, Strathcona Paper, in our municipality, and they are into a spreading program now. They have a system. They have dehydration, like composting part of it. They are using that to spread on a lot of land they own, and now they've expanded it to neighbouring farmers.

The sludge issue: the city of Kingston—Kingston township—has been actively spreading sludge in our municipality for quite some time. I'm not very happy with some of the methods and the procedure they use and where they spread it.

**Mr Peters:** Because time is limited, I just want to go back to paper sludge. Are you satisfied that we know enough about the science and what's inside that paper sludge that's being spread in your municipality?

**Mr Macdonald:** No, not really. We haven't researched it likely as much as we should. It hasn't really been analyzed. The only thing we've got is the analysis they've given us.

Bob, is there anything else you'd like to add?

**Mr Clancey:** I guess it comes back to what you mentioned at first, about the 40% land ownership. One question we were very adamant on was that you own at least 40%. We were challenged on land ownership through the farm practices review board, and we lost on that.

We feel that with land ownership at 40%, which ought to be minimal, the owner of the product has more control of the application rate that goes on the land. It's fine and dandy to say they do have control over it, but they don't. In actual fact, they deliver it to the contract farmer and we all know that sometimes it gets carried away at the end of the day. We're very adamant on the site plan control, because if we look at the amount of water, the land use or what have you that these factory farms or intensified farms can create, they're no different than a subdivision. In a plan of a subdivision it's a must for you to have a site plan control. This is why we feel a site plan control is very necessary in a large operation.

**The Chair:** Mr Macdonald and Mr Clancey, I want to thank you for coming forward with the brief from the township.

**Mr Clancey:** We thank you for your time.



## LAKE SIMCOE REGION CONSERVATION AUTHORITY

**The Chair:** Our next order of business is Lake Simcoe Region Conservation Authority. Good afternoon. You have 15 minutes. We'll ask you to give your name for Hansard.

**Mr Michael Walters:** My name is Mike Walters. I'm manager of environmental services at the authority. With me today is Gayle Wood, the chief administrative officer at the authority.

We're pleased to be here today. Essentially this issue is very pertinent to what we're doing at the conservation authority. We have a lake, Lake Simcoe, which provides drinking water to five communities and essentially generates about \$200 million per year in recreational activity dollars. This resource is actually in jeopardy right now because of nutrients, so that's the tie-in.

The authority essentially supports Bill 81. We think it's a good proposal. We also support previous submissions done by Conservation Ontario. However, there are some concerns we'd like to raise today.

First of all, there are other chemical, organic and biological contaminants which have been documented within runoff from agricultural areas, and we feel these parameters should at least be examined or reviewed as part of the legislation. Especially, biological pathogens should be examined.

If the goal of Bill 81 is to improve water quality, we feel that nutrient management plans should be done on a watershed basis. This addresses some of the previous concerns with site management plans in different conditions that might occur across the province where you're looking at these plans: different soil conditions, different issues with drainage. That's very pertinent.

The plans also should have regard for other natural features such as wetlands, hydric soils, recharge and discharge areas. By doing this you'll have a more holistic management plan that will ensure ecosystem health.

The bill should also discern between the large factory farm, as we call it, and smaller operations. We feel that's really important. There are a lot of family operated farms that are being grouped with these large factory farms, which essentially have animal units that are the size of some small villages. We would like to see some type of definition for these factory farms—

**Mr Peters:** Please give it to us. Help us.

**Mr Walters:** We would be pleased to participate in any further works on that. And they should probably have to go through a more rigorous review than the family-type farms.

Another thing we feel is really important is that there are other sources of nutrients out there besides agriculture. In our watershed, for example, urban runoff is a significant contributor to the degradation of Lake Simcoe, as well as atmospheric sources. I know it's not this bill's responsibility to look at those, but we suggest that

the message go back to the province that some of the existing legislation dealing with both urban development and atmospheric deposition be reviewed as well, because we don't want to be unduly pointing fingers at the agricultural community.

With respect to the biosolids issue, we do have issues in our watershed with biosolids. The authority supports the ban on spreading of septage and would actually request that it be considered a total ban instead of just five years, which we hear is the number being used, and the opportunity to look at other methods of disposal or treatment of that waste. The issue is that this material is being spread on areas that aren't being used for agronomic purposes, and we have found in the past that there have been problems with runoff in several of these areas.

The timing of biosolids is a big issue as well. We have farmers who have spent a great deal of dollars building manure storage so they can store their manure over the winter and time its application properly. We're seeing sewage sludge and biosolids being spread on frozen ground in the winter when they shouldn't be, and that is a cause of concern.

I think we do need a better understanding of the risks associated with some of the biosolids. The paper sludge especially has been a big issue within our watershed. If the science has been done, it certainly hasn't been communicated to the public, because they're still very, very concerned about the impact associated with spreading this material on the ground and what is contained in the sludge. Again, I would speak on behalf of our watershed community that at least we would like some clear science developed on what is being spread and how communities are being safeguarded with respect to what is being produced and discharged.

One of the most important things we see coming out of the bill is the cost, which is going to impact on the farm community. The farmers are essentially going to be asked to bear the brunt of costs associated with nutrient management, as might some municipalities if they have to expand their water pollution control facilities or essentially create sludge storage areas so they can store their sludge and then time appropriately.

We hope the province would strongly consider providing some financial incentives to the municipalities and primarily to the farm community so they can afford to undertake many of the activities they're going to have to as part of nutrient management plans. As I said, the average cost of manure storage, for example, in our watershed is around \$45,000. A lot of our farmers probably just cannot afford to be installing these things, so they need incentives. They need some assistance if they're going to implement some of these plans once they're done. Just the cost of the plan itself can be upwards of \$3,000 or \$4,000 or more, depending upon specific conditions in the farm area.

One method we might suggest which has proven successful in the past has been through incentive programs, whether they're through authorities or farm organizations. We've had a great deal of success in our water-

shed by providing financial incentives to landowners willing to undertake environmental projects, but we need a long-term investment to make sure these programs are sustainable. They are hit and miss right now, for the most part, based on municipal contribution and municipal dollars. We need provincial and probably federal re-investment in this area to ensure that there's a long-term sustainable program.

It's the same thing with educational programs. The environmental farm plan, for example, we feel is a great format for developing not only nutrient management plans but other activities that would deal with environmental hazards. We support at least the continuation of the environmental farm plan program throughout the entire province.

The last thing is, we would suggest that the province consider developing some performance measures to assess the impacts of the legislation. When we do legislation, when we do things of this nature, it's important to understand what the benefits associated with the work were. We feel that by undertaking some more surface and groundwater monitoring, we might be able to understand better what the impact of bringing in this legislation and the nutrient management plans might be on the farm community. Was there an improvement or not? That's the important question that has to be answered.

That concludes, essentially, my remarks. Hopefully everybody has the comments. They were faxed through. I see some blank faces. I can leave this set to be circulated with the committee. I'd be more than happy to entertain any questions.

**The Chair:** We'll certainly make sure that your brief goes to committee members. We have just under three minutes for each party. I'll begin with the PCs.

**Mr Galt:** I'd like to compliment them on the 50th anniversary of the conservation area. It was just an excellent day, a little warmer than today, but indeed a great celebration.

You have a program encouraging working with farmers to help the runoff. Would you like to explain to the committee how that works and how you've been able to retain some of those nutrients from going into your waterways?

**Mr Walters:** The program is focused on controlling nutrients, specifically phosphorus, from entering watercourses in Lake Simcoe, because that's the nutrient which is of main concern. Essentially, we do have incentive programs, the funding of which right now is provided through the municipalities. There are grants available for landowners who want to undertake environmental projects, like building manure storage to contain waste and be able to spread it properly, fence livestock out of streams, control milk house wash water runoff, control erosion from cropland. There is a host of agricultural—there is also an urban program which looks at urban storm water runoff, which as I said is a significant contributor to nutrient pollution as well. We try to be as holistic as possible. The problem is that these programs are short-term in duration and we need a long, sustained,

large investment to ensure that we can reach all the farmers. We have a waiting list within each of our municipalities now for people who want to undertake these projects.

**Mr Galt:** Just one quick comment. The legislation, by the way, is all-inclusive of any conditioner or nutrient going on the soil—biosolids, whatever. Another is that there is \$90 million in the healthy futures program and some of that has already gone out to help with protecting the quality of our water. So you may want to look further at that. Maybe you already have. I know just recently in Mr Barrett's area some of those dollars have been released to assist in this general area.

**Mr Walters:** We're just working on a detailed business plan now. The pre-proposal has been approved. Our concern, I think, is that the funding ends in 2003, so we're going to get it going and the program is going to tail off.

1340

**Mr Peters:** I appreciate your making the comment that your resource is in jeopardy of nutrients and that the message needs to be sent out that it's not just agriculture. I appreciate hearing that and I wish we could get that message out and get some of our mainstream media delivering that message.

Within your conservation authority, your own campgrounds or parks etc, how do you deal with the septage that comes out, if you do? How do you deal with your septage coming out of your own biffies, whatever?

**Mr Walters:** At the present time we have a number of areas. The septage is actually pumped out by a contractor.

**Mr Peters:** Where's it going?

**Mr Walters:** At this point it's a mix. Some of it does probably get spread as septage. A large portion of it—it depends on the municipality—is treated within sewage treatment plants and then put back on to the ground as sludge. So it really depends on where the property is. Durham is the area where we've had the most complaints regarding septage spreading. York region in our watershed actually does not allow the spreading of septage, and that's a bylaw which they've enacted. In many of our park areas in York, we know that the material is being pumped down to a sewage treatment plant, treated and then applied back on.

**Mr Peters:** I appreciate your comments too about the watershed basis, because these issues don't end at the municipal border; they do continue. I think that's important.

When you talk about regard for other features, are you suggesting that flexibility be built in? We're trying to set province-wide standards, but you may have a unique feature in your watershed that needs to be dealt with. So are you advocating there that we build some flexibility into this legislation so that—then, potentially we're not having a level playing field. I wonder if you could expand on that regard for other features.

**Mr Walters:** I think it gets back to even the earlier comments on the site management plan. Sometimes you



run into specific problems or differences with one property to another. The idea with looking at other features: we're looking at protecting, where we can, the entire ecosystem. We have been working extremely hard in developing sub-watershed plans where we identify recharge-discharge areas. We try to develop as much science on the natural features and functions as we possibly can within an area.

If you've got a really high recharge area which you know has groundwater sensitivity, then that should be considered when you're looking at a nutrient management plan. The farmer himself might be contaminating his own well, which is just down the road.

The idea is, yes, there should be some flexibility based on conditions that you're going to encounter at each of the areas. Again, it's going to be a very difficult task to do that, but it's something that we consider should be included in the plan.

**The Chair:** Thank you, Mr Walters, Ms Wood, for coming forward on behalf of the conservation authority.

#### SAFE WATER GROUP OF PRINCE EDWARD COUNTY

**The Chair:** The next delegation is the Safe Water Group of Prince Edward County. Good afternoon, sir.

**Mr Bruce Cattle:** Thanks for giving us some time this afternoon.

**The Chair:** We have 15 minutes. Please leave some time for questions, if you can, and please state your name.

**Mr Cattle:** My name is Bruce Cattle, which is kind of an ironic name for these discussions today.

I'm with the Safe Water Group of Prince Edward County. I'm glad we were here a little bit early this morning, because we heard some rather shocking remarks. One of the presenters said that it would be his worst nightmare if the public found out about a lot of this stuff. If you can take the time to read our presentation, it's one of our main points that the general public has been left out of the loop in all of these discussions.

The Safe Water Group of Prince Edward County is a growing association of concerned citizens who have been organizing around safety, sustainability and delivery of water in our community and in the province. Through independent research and public education, we focus on the dangers of sludge spreading, the impacts of intensive livestock operations, sewage treatment alternatives, and the retention of publicly owned and operated water services.

I just want to make it perfectly clear to any of the presenters who were here this morning that it's an unfair judgment, it's a completely unfair judgment that members of the general public are merely meddlers with agendas here.

Although we would not go so far as to call ourselves experts, we're getting there. We've been able to compile a lot of our own independent research and we know that a lot of our material provided for you today, we would say,

is from experts. I'd like to call to your attention our position paper; also, the article by lawyer Donald Good, "Steer Clear of Sewage Sludge," which is basically telling farmers why they shouldn't accept sewage sludge.

We are also very much interested in the alternatives to this. I've been aware that many times we've heard presentations through this process and the big question is, what do we do with this stuff? Our particular group has taken the initiative over the next year to organize an international conference on alternative methods of waste management. So we would like not to be categorized as merely confrontational and against, because that's not what we're all about. Our bottom line is preserving the ecosystem and the water in our area.

One of the points that we really wanted to stress in our position paper was that the province's main priority should be the overuse, the runoff, the contaminant addition of these so-called soil conditioners into surface and groundwater, soil and air. As we see it, it is not the nutrients per se that the province should be managing but the contaminants contained therein. It is therefore dangerous to focus almost exclusively on nutrient management at the expense of focusing on contaminant use. Clearly, the one-size-fits-all attempt at a level playing field framework that is endorsed by many people in the agribusiness could be a recipe for disaster. We feel more appropriate would be an agricultural-industrial contaminant control act, if we truly care about the health and safety of our watersheds and the life they support.

Just to let you know that we didn't pull that idea completely out of left field, I'd like to bring to your attention a transcript from the Walkerton inquiry. This is interplay between Harold Elston, a lawyer for the Farm Environmental Coalition, and in the midst of his final presentation, Judge Dennis O'Connor interrupts the lawyer for the Farm Environmental Coalition and says, "Mr Vogel"—who was an earlier submitting lawyer—"submitted that the difficulty with nutrient management plans is that they're based on the crop take-up of nutrients and that doesn't necessarily relate to the management of pathogens." The point he was making was that it could be complementary to a nutrient management plan to have a pathogen management plan. He goes on to say, "I'm not sure if you need two plans. We shouldn't throw out nutrient management plans but either amend them or add a new plan to deal with pathogens." This is not a radical idea; this is coming right out of the Walkerton inquiry.

The other thing that has come up since we started investigating these issues, and it's been over a year now, is that on June 1 the Canadian Infectious Diseases Society called for a moratorium on sewage sludge spreading. Their letter is part of our exhibit. They took such a strong stand because "citizens must be protected against potential infectious agents until there is clear-cut evidence that such actions will not lead to any potential public health hazard." They recommend entombing of the sludge at a sanitary landfill, and "that the disposal of all biomaterials be done in a safe and efficient manner, and that studies



be undertaken to ensure that current disposal/spreading techniques are safe for the human population.... A moratorium on their use is certainly in order where insufficient data exists regarding safety to the Canadian population."

It has been calculated that farms accepting sludge will need three to eight times more acreage in the future—and this has to do with high phosphorus content—to land-apply the current mass of sludge slated for spreading. This practice will ultimately not prove to be an economically viable procedure, nor has its safety been established. It makes sense to eliminate the practice of land application of sludge and septage and start to bring manure management in line with the management of other wastes.

1350

As you can see in our presentation, we feel that the obvious agency to take the lead on regulation and enforceability is the MOE, with consultation and in partnership with OMAFRA, the Ministry of Health, municipal officials and the public, and I might add, conservation authorities. OMAFRA must be free of the regulatory regime so that they can do effective extension work and not be in a conflict of interest as a lobby group for agribusiness interests.

I wanted to bring up a point about certificates of approval as required by the MOE for septage, paper and sewage sludge. Although this process has many faults, especially because it's a deal between the MOE, the spreader-hauler and the farmer only, neighbouring citizens or municipal governments are powerless to intervene. In our local experience, the MOE has not been particularly helpful with our requests for public documents, giving us the only option of going through the freedom of information process. Despite this, we feel that under no conditions should these instruments, ie, the certificates of approval, be discontinued.

But the most serious concern we have is that manure for spreading is not required to have a certificate of approval and it has an exemption from the Environmental Protection Act as long as normal farm practices are followed. Some municipalities that have tried to put restrictions on this practice with local bylaws have been overruled by the government's Normal Farm Practices Protection Board. You've heard from other presenters about the vagueness of that whole definition of "normal farm practices." I understand that the ideas change as the scenario goes along.

As far as the actual proposed act, municipal jurisdiction will further be eroded in the proposed act in section 60, which will supersede local bylaws. Since we are aware of OMAFRA's stance that size of operation doesn't matter, we are seriously concerned with this proposed provincial veto power. Bylaws have been passed in several municipalities that cover issues such as minimum land ownership, maximum haulage distances, minimum thresholds for hydrogeological studies and maximum numbers of livestock units. Our concern is that in trying to create a generic set of regulations that may fit

some but not all, municipalities will not be able to deal with special cases and circumstances in their area.

Regarding section 60, we feel it should be reworded to read, "A regulation supersedes a bylaw of a municipality or a provision in that bylaw if the bylaw or provision is less stringent than the regulation."

Furthermore, under the proposed section 55, the government has given itself the ability to download or privatize certain responsibilities. We're talking about "the review of any nutrient management plans or ... the issuing, amending, suspending or revoking of certificates, licenses...." We ask you this: if something does go wrong, who in fact will be responsible if this is off-loaded to the private sector? This is more appropriately a public service that should be maintained.

A minute about the establishment and operation of local committees: you heard from the CREEK group, who are in our area. The idea of local committees is superficially attractive, but in many cases local committees do not have the political will to mediate disputes between the public and offending farmers. In our county, for example, the agricultural advisory committee that wrote up our local nutrient management bylaws was severely lacking in general public input. It has stated that it will continue with its present membership. These include two councillors, two ratepayer representatives, the local head of OMAFRA and 10 farmers, one of whom owns the local factory hog farm. We feel the benefits are lost of any kind of democratic peer review here, especially if certain farmers dominate their area.

As far as enforcement, as previously noted, the Ministry of the Environment should provide the authority for monitoring, enforcement and mediation regarding nutrient management plans. If there's an emergency spill or abnormal contaminant levels, they should be the lead agency investigating. Municipal government levels simply do not have the capability or arm's-length relationship to the community to provide the enforcement of nutrient management plans. Also, these plans should be publicly available documents so that full disclosure is required for proper assessment of local operations. These documents should be available for review at municipal offices. Complaint files of repeat offenders should also be available. Transparency could be achieved by posting the details on the Environmental Bill of Rights registry. Citizens must see that rules are being observed on such things as separation distances.

A word about stakeholders: whenever we've looked into the power dynamics and process of nutrient management and agricultural issues in general, there seems to be an exclusive club of stakeholders, which includes OMAFRA and a number of high-profile agri-businessmen who generally support the deregulation of stringent standards and discourage MOE investigation and enforcement and allow only token participation by the rest of the community. We strongly recommend that this trend be reversed to include environmental groups, other non-governmental organizations, as well as the general citizenry. We urge you to initiate this by allowing such



interveners full status in the next stage of consultations around the regulations and standards of this bill.

About liability for farmers: actually, there could be liability for the generators, commonly the municipal sewage treatment facilities, the hauler-spreader, and of course the farmer. We'd like to bring to your attention this article, "Steer Clear of Sewage Sludge." I wish I could get this out to farmers all around Ontario. Don Good was raised on a dairy farm in Waterloo county. His practice is restricted to agriculture, food and environment law, and he brings up this point:

"If the application of sludge (often called biosolids) to farmland is a waste disposal program, farmers should demand a tipping fee for the use of their land as a waste disposal site. If the sewage sludge is a valuable fertilizer product, the city should sell it to farmers for its nutrient value. In fact, farmers should want to buy it. Why don't they?"

"The fact that sewage sludge has to be given away implies it is worthless. In other words, the nutrient value is offset by some other cost." Don Good believes that "this lack of value arises from the inherent risk of using material contaminated with human diseases on farmland. That's the offsetting cost.

"There is your dilemma! The promoters of sludge-as-fertilizer call it a valuable recycling program that is safe. On the other hand, sludge has no value due to its inherent risk."

On an ethical point, he goes on to say, "Ultimately, clients of farmers are food consumers. As a farmer you should never adopt a practice that undermines the confidence of consumers in the safety of food you produce. The application of sewage sludge to farmland does just that. On this basis alone, farmers should not apply human sewage sludge to farmland."

**The Chair:** That pretty well wraps up our time, Mr Cattle, although I would ask if either party has a quick comment.

**Mr Peters:** I have a couple things. On page 7 of your presentation you say, "The land application of sewage sludge, septage and paper mill sludge should be discontinued and other means investigated." Do you have some suggestions to us as a committee as to where we should be going to look at some of these alternative means to deal with it? Just quickly, if you want to get out to the ag committee, there's a chat line called "OntAg," and it's a great way to connect with the agricultural community. Anyway, page 7: if you could just direct us where we could go.

**Mr Cattle:** There are a lot of different places. One of the things we're very excited about, and it's going to be highlighted at the conference we're organizing, is the use of constructive wetlands and living machines. We've got some material here about living machines. There's a place down in Nova Scotia that's doing this. The population of Burlington, Vermont, is 13,000, and they're diverting the equivalent of about 2,000 of their citizens through a constructed wetland and living machine process.

We've tried to provide you with just a sketch of what living machines are and what ecological sewage and waste water treatment could be. We feel that because of the toxicity, paper mill sludge and septic and sewage sludge should be discontinued. Of course that isn't going to happen immediately. Perhaps it could be phased out, as you're talking about septage, but it should not be applied to agricultural land.

1400

**Mr Galt:** If I may, just a few quick comments. I know it's always easy to criticize a government for lack of consultation and to have more of the general public involved, but I'll give a thumbnail sketch of what we've been doing.

This concern was raised and started to evolve in 1998-99. Directive staff developed a green paper in the fall of 1999. It was then put on the ministry Web site. We had extensive consultation, as Mr Barrett and I travelled the province in January 2000. That report was then given to the minister, who released it in July, along with his response. That was all put on the Web site. Three of the ministries involved, municipal affairs, environment and agriculture, met with stakeholders for a full day in Guelph on the last Saturday in September last year. Staff had further consultations last winter. We had first reading in June this year, and that was put on the Environmental Bill of Rights registry for a 60-day response. Staff was out again in July, explaining to the public what was going on with this bill. And we're out after first reading, not after second reading. It is very unique for governments to go out after first reading. I think it's the fourth time we've gone out.

We've been extremely open, extremely consultative in looking for information and feedback.

**Mr Cattle:** We're thankful for that.

**Mr Galt:** I can assure you there will be further consultations as we develop regulations. I'm not sure how much further we could go. If you have time, maybe you could tell me how much further we should be going with consultations.

**Mr Cattle:** I guess I was trying to explain that in our experience, it's been a rather exclusive club. I know you're saying that there has been public consultation. This would be called public consultation. We'd like more than 15 minutes. We would like to be interveners and proper stakeholders in the process.

**The Chair:** We have 22 people before us today, so we do have time constraints.

#### RIVER VALLEY POULTRY FARM LTD

**The Chair:** Our next delegation is the River Valley Poultry Farm Ltd.

**Ms Pauline Embury:** Good afternoon. My name is Pauline Embury. With me is my father, Elwyn Embury. Let me begin by commending Minister Coburn and the Ministry of Agriculture, Food and Rural Affairs for their efforts in developing this legislation. It is important to each of us that a clear and consistent set of standards be

set across the province. We all want to ensure that the family farm and our rural communities continue to thrive and remain productive for generations to come.

We are here today representing our family and the employees of River Valley Poultry Farm Ltd. Our family has operated our egg farm in the village of Newburgh for 50 years. We have become one of the largest egg producers in Ontario. River Valley is predominately involved in egg production, but is also home to one of Ontario's largest herds of purebred polled Herefords. Two years ago, our farm was proud to have bred the Canadian national cow and calf champion, which also went on to become the American cow-calf champion. We have been proud to represent the great genetic base that has been developed by the breeders of Ontario.

Let there be no mistake: our farm has always been a family operation. My father, my brother and I continue to operate it on a daily basis. Although some would classify large farms as intensive or corporate farms, with little concern for the community, the environment or the health and well-being of our animals, we are on the farm 24 hours a day, seven days a week. Our family and many of our employees live near the farm or in the surrounding communities and support the local economy.

Over the years, our farm has striven to incorporate the best use of technology in our buildings and in the environment for our livestock. We were one of the first participants in the Ontario Egg Producers' hazard analysis critical control points, or HACCP plan. This, and other food safety and quality programs that include regular on-farm inspections by egg board staff to monitor farming standards, ensures the safest and best quality product is produced for the Ontario consumer.

We have completed a nutrient management plan for our farm, which has undergone third party review by the Ministry of Agriculture, Food and Rural Affairs. We believe that all farms should complete a plan, not just those of a certain size or scale. The farmer with 10 cows with free access to rivers or lakes is as likely to be a cause of concern as is the farmer with 100 head contained in an enclosed barnyard. We believe that each farm needs to have a working nutrient management plan based upon province-wide standards that cannot be over-ridden by municipalities.

River Valley Poultry Farm has taken the initiative to deal with the manure from our livestock operations in a responsible manner. Our farm was one of the first to construct a covered manure storage for dry manure. By continuing to work closely with OMAFRA, we are committed to ensure that all guidelines are met or exceeded. It is our hope that this legislation will build upon the best management practices that Ontario's producers have developed voluntarily.

However, what works on one farm does not necessarily work on another. These plans must be developed by the farmer with the assistance of qualified people and meet the approval of the Ministry of Agriculture, Food and Rural Affairs. Having said that, we would also ask

that the farmer's nutrient management plan should not become a public document.

We can expect that there may need to be changes in some of the methods which we have used in the past. As with any business, long-term planning is needed in order to effect change without causing undue hardships. We would suggest that a phase-in period of five years be allowed for education and to fully implement the changes that some farmers will need to undertake.

Any new guidelines should operate under the Farming and Food Production Protection Act. The Normal Farm Practices Protection Board must be maintained and strengthened to respond to concerns dealing with all manure-handling and farm-related issues. As those who know the issues of the farming industry and the rural community, OMAFRA should be the primary ministry involved in administration and enforcement of any new regulations. Pollution and the prevention of such are the responsibility of the Ministry of the Environment. Agriculture is the responsibility of OMAFRA.

It is also important that farmers, both large and small, continue to be consulted by and participate in local advisory committees, as suggested by Bill 81. Guidelines for these advisory groups must be clearly laid out so that all types and sizes of farms are represented, as well as the concerns of the local community.

It has been suggested that a minimum amount of land must be owned by each farmer based upon the number of livestock units on the farm. Some have even suggested there should be restrictions on the number of animal units on a farm. Requirements for minimum acres of land owned or number of animal units per farm would be restrictive to the growth of the industry. Land ownership and animal units are not the issue here; the issue is how the land is utilized and the best use of nutrients.

In our own case, we recently applied for a building permit in our township of Stone Mills. Our township's intensive farming bylaw requires 40% land ownership. We are not in the business of growing crops; we are in the business of egg production. Our farm has traditionally had relationships with our neighbours to utilize any of our excess manure. The Normal Farm Practices Protection Board heard our case and the requirement was overturned for our farm. We believe that any such restrictions of land ownership would be restrictive to normal farming practices and do nothing to address environmental concerns.

In closing, we believe that farmers are prepared to participate in the changes that will arise as a result of this legislation. These are changes which will benefit all Ontarians. However, in order to help farmers stay competitive and not be burdened by additional financial costs, we would ask that the government provide financial assistance to farmers through grants or incentive programs to help them implement these changes. The government already issues assistance to industries to reduce air pollutants and to municipalities for improving their sewage systems. It would only be consistent, then, for the government to support those who produce our food.



Because of the delay in introducing this legislation, farmers who have wanted to expand their business in the past two years have been forced to comply with township bylaws which have had no continuity across the province. Farmers who have already made the capital investments to take the necessary steps to comply with nutrient management plans or regulations imposed by township bylaws should be given retroactive financial assistance to compensate for incurred costs.

Farmers are good stewards of the land. We make our living from it. Agriculture and agri-food are Ontario's second largest industry. Ontario farmers are known throughout the world for the high quality of their products and their high standards for food safety. Ontario farmers do not want to pollute or destroy the land from which they make their living; we want to maintain it in a healthy and productive manner for the generations to follow us. It is only through a balanced approach that sets out reasonable and obtainable goals that we will be able to accomplish this.

Thank you for allowing us to be part of this consultation process. Again, we applaud the government's leadership in developing this legislation. We only ask that the legislation be reasonable in its approach to ensure that our rural communities continue to enjoy a healthy and sustainable environment from which we may all benefit. Thank you.

**The Chair:** We have a minute and a half for each party. We'll begin with the Liberal Party.

1410

**Mr Peters:** I'd like to have research staff review the decisions of the Normal Farm Practices Protection Board just to find out how any of those decisions may impact on this legislation. We've just heard of one today where we talked about land requirements. Here is a case that was successful, so I think we should maybe find out what some of those decisions have been and make sure we're not running contrary to something that has already been done.

How would you classify your farm? We've been having great fun trying to define family farms and intensive livestock operations since we started this process, and we're in day 8 right now. You're a family farm, that's pretty obvious, but you're also an intensive livestock operation. We've heard some presentations made that we need to protect the family farm and work toward restricting intensive livestock operations. How would you define yourself?

**Mr Elwyn Embury:** I think a family farm is run by the family. An intensive farm would be run by a corporation that would invest in the operation, and they're not on the farm every day. It would be more or less an investment for them. Would that be reasonable?

**Mr Peters:** We'll add that to our list.

This is going to be a real challenge, I think, when we talk about financial assistance. We've had a number of people who have advocated for the need for financial assistance and you've raised the point, at least for the first time that I can recall in our hearings, of retroactivity.

You've talked about your own farm and some of the covered manure storage and things like that. What would you define retroactivity as being? If we were going to have to consider that, how far back would you be going to look at improvements that an operation like yours has made?

**Mr Embury:** We've made a lot of them. We've done an extensive nutrient management plan, I guess last year, which cost us a huge amount of money. I don't have any regrets; I think it was a good thing. I think you would have to go back two or three years actually to pick up, at least.

**Mrs Molinari:** Through the hearings in the last number of days we've heard some consistent themes, and some are opposing themes. I don't know whether you were here for the last presenters' presentation. There's the whole issue around the management plan and it being a public document versus it not being a public document. How would you respond to someone who says that in fact it should be a public document?

**Ms Embury:** In our case, we enter in with a number of our area friends and farmers as part of our nutrient management plan. They've signed contracts, I guess you would call them, saying that they would take our manure. The whole issue of public scrutiny—I'm not against people knowing what we're doing. We run a very clean operation. But I think it puts people on edge who would normally take our manure, saying, "Gee, if this is going to be put in the paper, maybe we'll rethink this. Maybe we don't want to be involved with that."

**Mr DeFaria:** I just want to congratulate the presenters. I think it has been a very positive presentation that you have made. Also, you have outlined all the steps you have taken to comply with the best practices in your farming and in your poultry production.

You raised an interesting point, which hasn't been raised before to my knowledge, which is, what about people who have complied with best practices and have done more than what maybe the provincial regulations will require? Will they be compensated in the same way as the people who have not done what they should have been doing but who are asking for compensation? I think the parliamentary assistant to the Minister of Agriculture will take that note to the minister, because I think that's a very good point you have raised. Thank you very much.

**The Chair:** I wish to thank the Embury family for your presentation.

#### CLARINGTON AGRICULTURAL ADVISORY COMMITTEE

**The Chair:** The next group is the Clarington Agricultural Advisory Committee. Good afternoon, sir.

**Mr Dave Davidson:** Thank you, Chair. I've seen a lot of variety and quality in the presentations today. My name is Dave Davidson. I'm on the Clarington Agricultural Advisory Committee. I'm also the director for Durham of the Ontario Cattlemen's Association. I'm going to skip the preamble. Where we refer to the agri-

cultural advisory committee, I'll mention "committee." We will start on page 3, definitions, 2.2.

The committee recommends that the definition of "processing" be revised to include the term "further processing." This will reflect those operations that require extra measures, such as freezing, in the preparation of produce for market. It is recommended that the definition of "processing" be revised to include the term "further processing."

Licensing, certification and education: The committee is concerned that the regulations will require that the person applying the nutrient must be licensed. Since nutrients do not pose a health hazard to the person applying the product, we believe that limiting the licensing to a single person is not warranted. The committee recommends that the regulations provide options in licensing, allowing companies to obtain a licence or to agree that non-licensed persons may apply nutrients under the supervision and guidance of a licensed person.

The committee would like clarification as to the type of education that will be required in order to be licensed to apply nutrients or store nutrients. Details on certification, including expiry of certification, number of courses or hours required to achieve this and who would be responsible for paying course registration fees, if there are fees, have also been requested. The committee is concerned that the monetary cost and the amount of time dedicated to education and training will be onerous, making it impossible for the average farmer to effectively participate in certification.

The role of local advisory committees: The legislation allows for the creation of local farm advisory committees to promote awareness of the new nutrient management rules and to mediate local nutrient management non-compliance issues. The committee supports the concept of having a local committee involved in resolving a dispute. However, the committee is concerned that the local advisory committees may not have the expertise to deal with all the issues. It is recommended that training in mediation, negotiation and the identification and determination of potential impacts of all kinds of nutrients be provided for a local advisory committee, and that the cost of training be the responsibility of the province.

Issues of liability: The draft legislation does not appear to address the issue of liability, except the clause exempting the province from liability. A farmer/landowner should not be liable for the misapplication of nutrients if applied by an independent body. Clarification on who would be responsible for the misapplication of nutrients is required.

Financing and funding: The draft legislation does not address funding and financing options. Funding is required to support the manpower needed to review nutrient management plans, enforce the legislation, provide training and education, establish and operate a registry system and support scientific research needed to substantiate the regulations.

Costs should not be borne 100% by the farmer. Costs to comply with the legislation may result in bankruptcy

of many farms. Financial incentives for retrofitting existing infrastructure or building new structures due to location or capacity issues should be considered. The cost of administering and ensuring that this legislation is effectively implemented should be addressed in the legislation.

#### 1420

Delegation of authority: The legislation provides for the delegation of powers to review and approve nutrient management plans to other organizations, agencies or persons. The committee wants to ensure that the organization or body being the recipient of the delegated authority is familiar with the local agricultural industry and agricultural conditions. The committee recommends that the delegation of authority be to a person, agency or organization that is abundantly familiar with the local agricultural milieu.

The staff comments from the Clarington planning department are as follows.

Bill 81 is enabling legislation only. The legislation should lead to a clear set of regulations that will apply consistently across the province. However, until regulations are prepared, a detailed assessment of the potential impacts and implications this legislation may have on the municipality and the agricultural industry will be difficult to determine.

The province of Ontario fully intends to delegate the review and approval of nutrient management plans within two years. The region of Durham was advised that this function will be carried out by a private organization. However, this will be dictated by the regulations and, until the regulations are finalized, there is the possibility that it could be delegated to a municipality. The municipality would have to hire additional staff to take on the additional responsibilities and would assume legal liability. There would also be an expectation from the public that adequate staff resources and expertise are available. Accordingly the municipality does not support the delegation of the review and approval of nutrient management plans to municipalities.

The proposed legislation and the subsequent regulations will only make meaningful improvements if there is dedicated monitoring and enforcement staff. The province's shift to self-regulation of many industries over recent years does not protect the environment or the health of citizens, and neither does a downsized enforcement staff. Without sufficient staff, enforcement will only be complaint-driven. There should be sufficient staff resources to undertake periodic inspections to ensure that operators are complying with the approved plans. The municipality supports the proposals to give enforcement staff the authority to enter lands, inspect and issue compliance and preventative orders onsite without having to wait for the time-consuming court system. While this ensures that health issues are addressed, it is recognized that there is a system to appeal provincial decisions to the environmental review tribunal or divisional court to ensure that orders and penalties are appropriate.



The forthcoming regulations from this legislation must clearly ensure that farms are not simply used as a convenient disposal site for manure and biosolids. Recent experience in Clarington has highlighted that biosolids are being disposed of on farmland at rates much higher than needed for soil enrichment.

If the ministry is required to undertake remedial work that the operator refuses to do, the ministry may make an order for costs against the property owner and direct the municipality to collect the costs through the municipal tax roll. Any reasonable costs attributable to the collection will be paid to the municipality. If the taxes resulting are not paid, the municipality may proceed by means of tax sales, with the attributable portion payable from the proceeds of the tax sale. If the offence occurs on land rented by a farmer, the municipal lien may be placed on other land that is owned by the farmer and collected in the same manner. This could result in the municipality adding the costs of remedial work in another municipality to the tax rolls in Clarington. The finance department has some concerns with the tax sale procedure. Since the order for costs would have the same precedence as municipal tax arrears, there is the possibility that it could result in lost funds to the municipality in the event of tax sale proceedings.

The Nutrient Management Act and the subsequent regulations will supersede municipal bylaws that deal with the same subject matter. Some municipalities have nutrient management bylaws, so these will be superseded. Under the act, the minister may regulate the size, capacity and location of a building to store nutrients and to house farm animals. However, until the regulations are drafted, it is not known whether the Nutrient Management Act will limit the municipality's powers to regulate intensive livestock operations through its zoning powers.

The legislation and regulations have the potential to place a financial burden on existing agricultural operations. Considerable investment in time and money may be required to comply with the legislation. However, the Ontario Federation of Agriculture supports this legislation as necessary to address the environmental impacts of farming. The phase-in period will assist farmers to prepare. In order to ensure that smaller farms can make the changes necessary to fulfill the requirements of the legislation, it is suggested that there be some financial incentives to help smaller farms comply.

In conclusion, we commend the province for preparing the legislation. The underlying intent to regulate the land application of nutrients is required to ensure that the environmental health of the residents of the province is not jeopardized. The municipality of Clarington has carefully considered the legislation in consultation with the committee, and it is recommended that the province give due consideration to the comments contained in this report. It is also requested that the municipality of Clarington and the committee be provided with an opportunity to comment on the regulations when prepared.

**The Chair:** You've used the 15 minutes right on the button. Thank you for this presentation, and we thank the Clarington Agricultural Advisory Committee.

1430

#### LENNOX AND ADDINGTON FEDERATION OF AGRICULTURE

**The Chair:** I'd like to call forward the next delegation, the Lennox and Addington Federation of Agriculture. Good afternoon.

**Mr Iain Gardiner:** Good afternoon, ladies and gentlemen.

**The Chair:** We'll get your name for Hansard. You have 15 minutes.

**Mr Gardiner:** My name is Iain Gardiner, and I am president of the Lennox and Addington Federation of Agriculture. We really look forward to the opportunity to get some of our ideas and concerns out to you today.

The Lennox and Addington Federation of Agriculture represents more than 400 farmers and farm families within our county. The agriculture and agribusinesses within our county are very diversified, very innovative and highly variable. The legislation on nutrient management must therefore be science-based to ensure that the non-farming residents of the province have confidence in our agricultural systems and also, most importantly, in the farmers who are operating those systems. The standardization of livestock units needed to trigger the requirement of a nutrient management plan, rather than the numerous different requirements we've heard about just sitting here today, depending upon municipality, is necessary. The development and implementation of nutrient management plans by farmers that are tailored to individual farm operations is essential.

Just to go away from the script a little, the great discussion is, what is a factory farm? What is an intensive livestock operation? So much of that is subjective. You could say, if someone has 200 stockers but 1,500 acres to apply those nutrients, is that an intensive agricultural operation? Or if someone who has three horses on a quarter-acre lot for their kids to ride, is that an intensive agricultural operation? Perhaps they're not producing as much, but what effect are they also having on the rural waterways and groundwater and surface water?

The Lennox and Addington Federation of Agriculture knows that the enforcement of this act requires expert opinion on a variety of areas and that the public and the agriculture community must have confidence that the government is overseeing the process. The Ontario Ministry of Agriculture, Food and Rural Affairs has individuals with the necessary experience and expertise to provide information on manure handling and storage, soil sciences etc, and the Ministry of the Environment could provide enforcement personnel to establish within OMAFRA a unit responsible for administering the requirements of this bill. The need for verification and periodic or random inspections should be outlined within this bill to provide direction and to help the producer



showcase the benefits of having a nutrient management plan.

Furthermore, the economic and environmental impacts this legislation has on Ontario need to be studied and tracked to ensure that the agricultural industry is strengthened. A baseline inventory and ongoing studies are needed to assess the effects of this legislation.

The benefits of this legislation will be shared by all Ontarians, urban and rural, farm and non-farm. Therefore, the cost of providing that benefit must then also be equally shared.

Finally, please, Bill 81 must not be looked upon as the one and only answer. To develop a truly comprehensive nutrient management strategy, all producers and users of nutrients must be identified and assessed. We must remember to make this a science-based and factual strategy in which all residents work together toward protecting our surface and groundwater resources for future generations.

I would like to get this into the record as well. I was actually at the International Plowing Match yesterday. I live in Napanee, so it was about two and a half hours that way, and this is about two hours this way. I never got a chance to read our local paper yesterday because I was away, so I was flipping through it this morning. This is the front page of the Kingston Whig-Standard. It's probably known as the longest-running daily newspaper in Canada, since 1834. "Raw Sewage Flows into City Waters." I don't know if you've had a chance to read this article.

**Mr Beaubien:** Is that from a farm?

**Mr Gardiner:** No. Actually, I'll just read you the article; it's very short. "An abnormally dry summer has vividly exposed one of Kingston's enduring and repugnant problems: the dumping of raw sewage into local rivers and lakes.

"It is absolutely disgusting—the stench is overwhelming," said environmentalist Doug Fletcher Tuesday, as he watched cantaloupe-sized masses of human excrement, soiled tampons, paper and other garbage flow from a mammoth concrete sewer pipe into the bulrushes and reeds along the west bank of the Cataraqui River." The Cataraqui River flows out between the city of Kingston and Old Fort Henry, probably one of the most picturesque pieces of shoreline on all of Lake Ontario.

"The stench of the raw sewage could be clearly smelled from the fairways of the golf course Tuesday morning.

"The Kingscourt storm sewer outfall, as it is known, is roughly 1.5 metres in diameter.

"The pipe, which empties into the river at a point on the southern edge of the Belle Park municipal golf course, collects storm water from a substantial chunk of the city's urban core, bounded by Kirkpatrick Street, Drayton Avenue and York Street.

"Under normal conditions, it should carry only runoff from roads, roofs and other flat surfaces that feed underground storm sewers.

"These sewers empty directly into lakes and rivers, unlike sanitary sewers, which pipe sewage to a treatment plant.

"The city has been aware, since 1992, said senior official Paul MacLachy, that this pipe and four others in the city have what is euphemistically known as 'dry weather flows.' The city recently committed \$25,000 to investigate and fix the problem.

"It's mostly just a product of an abnormal weather condition and the fact that there's a situation of pollution going on that shouldn't be going on and we'll get on with tracking that down," MacLachy said.

"The city suspects that homes and businesses have illegally or accidentally hooked sanitary sewer pipes into the storm sewer system, funnelling sewage and garbage from toilets and sinks into a system that was not designed to trap such waste.

"This pollution is flowing unchecked into the river. The ugly problem is usually hidden by storm water runoff that dilutes the sewage.

"In a nutshell that's correct," MacLachy said.

"Fletcher photographed the site, then notified the Ministry of the Environment of what he considered a spill. He was told that the ministry is aware that roughly 225 litres of sewage is spilling into the river per minute from the pipe.

"At this rate, nearly 327,000 litres of foul material, enough to fill four backyard swimming pools, is flowing into the river every day.

"They said it's been like that all summer," Fletcher said."

I'll just go down a little bit.

"The pipe drains into a marshy creek that runs through a large stand of reeds and bulrushes and into the river.

"Fletcher ventured a few dozen metres from the edge of the pipe, into the marsh, finding more garbage including toilet paper and sanitary products trapped in the vegetation.

"The smell is incredible."

They've known about this since 1992, and there are pictures of the things that are flowing in here. So, please, members of the committee, as farmers we're stewards of the land. We drink the water that's impacted by anything that we do on our farms. We're more than willing to work together to help out in whatever way we can, but there is a perception which some members of the public have that it's only the farming community that has any impacts upon our rural watercourses.

Something else that should be discussed as well are all the abandoned and improperly constructed wells in the countryside that have an impact on the surface water quality. If you have an abandoned well and something gets into that, it can contaminate an entire aquifer.

I'm more than willing to answer any questions you might have and I thank you for this opportunity.

**The Chair:** Thank you, Mr Gardiner. We've got about two minutes for each side for questions.

**Mr Beaubien:** I don't think you were here this morning, but I asked on two or three different occasions



somewhat semi-rural, urbanite people whether their own municipalities had tertiary sewage treatment plants, and the answer was no.

You hit the nail right on the head, that we're looking at a nutrient management plan for biosolids and waste from the farm community, and you say that this municipality has been aware since 1992 of its problem. I would strongly suggest there are numerous other municipalities in Ontario that have had this problem for the past five, six decades. I have one in my own community, with a population of 70,000 people, until six months ago with only a primary sewage treatment plant system. So 65% of their raw sewage went directly into the St Clair River, which empties between Lake St Clair and Lake Huron. And then we're concerned about some issues on the farm.

Having said that, because I keep hearing about Walkerton, about how this government was lax, I didn't see the farming community also point out that fact that you just pointed out today, that Walkertons can be caused not only by agricultural animals but also by human waste. That's all I have to say, Mr Chair.

1440

**Mr Peters:** It made the Peterborough Examiner as well this morning, and I hope they had the coloured pictures. As a former municipal politician, mayor of St Thomas, I'd like just to echo what Mr Beaubien said: the beaches would be posted in Port Stanley every year, and we were a pretty big culprit. But do you know how much it cost to build a combined sewer overflow to stop 90% of the dry-weather bypasses? It was \$3.2 million. But that doesn't stop it all.

You raise a really good point, and you may know that we've said it before: it's a collective responsibility here, folks. You can't just keep pointing the finger at the ag community.

We've heard a lot about economic and environmental impact reports that we need to conduct. Let's leave the environmental impact aside; it's important, but we're running out of time. If we were to conduct an economic impact study, and you made reference to it, what would be some of the things you'd want this committee to look at?

**Mr Gardiner:** One of the things the committee could look at first of all is perhaps consolidating some of the information that's already available through the various economic impact studies of agriculture that have been done around the province. So that would probably give you a pretty good baseline of it.

In our county, Lennox and Addington, we combined with Frontenac and Leeds-Grenville counties to come up with a three-county economic impact study where we actually came up with the facts and figures and numbers, not just opinions, about some of the impacts we were having, such as over \$470 million worth of farm gate sales and over 11,400 jobs tied directly and indirectly to agriculture.

There's a basis right there. This is going to be something, no matter which way we look at it, that is going to

impact the farmer's pocketbook at the end of the day. There are going to be certain regulations, fees, schedules, courses, time away from other aspects of their farming operation that they have to contribute work to, to becoming compliant. There are going to be things that suffer, and we need to quantify those, because this is for the benefit of all people in Ontario. It shouldn't be fair that only one portion of the community is singled out to bear most of the financial burden.

**Mr Peters:** By the way, the municipality received about \$800,000 from the province to build that CSO as well.

**The Chair:** I wish to thank you, Mr Gardiner, for coming forward on behalf of the Lennox and Addington Federation of Agriculture.

#### HUBERT SCHILLINGS

**The Chair:** Our next scheduled delegation: I wish to call forward Hubert Schillings. With the hearings, individuals have agreed to 10 minutes, so you have 10 minutes, sir.

**Mr Hubert Schillings:** Good afternoon. My name is Hubert Schillings. My family has operated an egg, a hatching egg and a cash crop farm in Durham region for the past 45 years. I am the second generation on the farm, and I hope to see the third generation.

I appreciate the opportunity to speak about this important new bill. We see ourselves as caretakers rather than owners of the air we breathe, the water we drink and the land we farm. We are deeply committed to passing these resources on to a third generation, as my parents did to me, to ensure our way of life is preserved.

It's for this reason that many family farms have in place programs that ensure manure is handled in a way that minimizes environmental impact. That's why I'm pleased to hear that this legislation will build upon the best management practices found in the communities around Peterborough, Durham region and rural Ontario. Only by doing so will the new bill avoid placing the additional burden of overbearing costs on the farmer's back. After all, this legislation is about striking a balance between environmental protection and productive farming, and not about regulating farmers out of farming.

New legislation may require costly upgrades to infrastructure; for example, manure storage and increased manure storage capacity. As such, the government will need to help our family farms in terms of capital investments. It already issues tax credits to big industry for reducing air pollution. It also provides money to municipalities for improving their sewage systems. Providing financial support to farmers would be consistent with the strategy of the government.

To implement this, I believe in a minimum of a five-year period to ensure a seamless transition can be made to nutrient management plans. After this period, all producers in Ontario must be treated equally.

I want to go a little off script here. What I mean by "must be treated equally" is regardless of size—big,

small, medium—and regardless of what municipality you're in, eastern Ontario versus western Ontario.

Some suggest that a minimum amount of land may have to be owned by each farmer, based on the number of livestock. Such a requirement would result in considerable inefficiencies in farming operations with limited acreage without addressing the environmental concerns that gave rise to it. Therefore, minimum acreage regulations are not required to protect our natural resources.

To go off course a little bit, a lot of us have land near us which we do put manure on. My thing is that people who don't own their own land, as long as they've got land of neighbours, of other landowners, that can handle the manure, there should be no need for minimum acreage. I do believe that part of a nutrient management plan is that you have acreage already committed for the next two years. At the same time, if you want farmers to have minimum acres, the municipalities had better too.

I support the idea of this legislation. Preserving our natural resources is in everyone's best interests. But so too is preserving our farming way of life.

I ask you to develop balanced legislation with reasonable and attainable goals. This is the only way to ensure our rural communities continue to thrive in a healthy and sustainable environment.

Thank you. Do you have any questions?

**The Chair:** That leaves us with a little over two minutes for each party for questions. Dr Galt, did you wish to kick off?

**Mr Galt:** Basically, as I read your presentation and listen to you, it's essentially supportive.

**Mr Schillings:** Yes.

**Mr Galt:** Thank you for that. You were here during the last presentation and heard about the raw sewage going out into the Rideau?

**Mr Schillings:** Yes.

**Mr Galt:** Do you feel that maybe you're going to be hard done by with possible legislation when you read about that? What is your response?

**Mr Schillings:** No, I don't believe we'll be hard done by, but I believe that farmers and municipalities with sewage sludge—I'm from Durham region; we have Atlantic Packaging and we have a major problem with paper fibre garbage—all have to be treated equally. I sometimes think the public doesn't recognize that some of the public's problems are greater than the farmer's problems.

We also have a problem in our area. We've got Toronto pellets coming now, which is basically dry sewage sludge. We had a fire half an hour away from us, in Clarington. The municipalities have a bigger problem than the agricultural community does, generally speaking. I want to be treated equally, I want all farmers to be treated equally, but I also want the municipalities to do their thing too.

We have another problem in our area, in Durham region. We're doing composting. They collect all this

yard waste, which I agree with, but they don't have proper facilities to handle it after it's collected.

1450

**Mr Galt:** Just a quick comment. I'm talking with a municipality, and I won't even hint whether it's my riding or elsewhere. The sewage treatment system that was put in, at least a collection, 10 years ago, is totally outdated today with laterals dumping sewage directly—missing the pipe—into the storm sewers. A water treatment plant put in five years ago is not meeting compliance today.

I'm not sure where we go as an Ontario government in helping municipalities. What went wrong with those two systems I don't know. Was it the Ontario government not monitoring it closely enough at the time? Was it problems with the engineers of the day, not looking at it closely enough? But we're struggling with—and rightly so—what we're dealing with today. It's certainly not acceptable, this description that we heard just a few minutes ago; totally unacceptable. It's got to be stopped, it's got to be turned around.

I'm just curious on your response after hearing that, and thank you.

**Mr Peters:** Centralized composting can work. My municipality, St Thomas, went city-wide in 1994 and has been able to reduce its landfillage by about 50%; so it can work if done properly.

Do you have sufficient land right now? For your own operation, do you spread all your own nutrients on your own land, or are you relying on others to accept some of your nutrients?

**Mr Schillings:** On our personal operation, we have enough land.

**Mr Peters:** OK. Let's say somebody didn't have enough land, or you didn't—we'll use you as an example—and you were relying on contracts on other properties. I know this is a bit hypothetical, but let's say that for some reason the ownership changed on the property, and the new owner chose not to renew the contract or said, you know, "When it's done, you're off my land." What do we do in a case like that for an egg producer? Do we say to you as an egg producer, "You've got to cut back your production immediately because you have lost that contract," or do we give you some time to go and try to find some other lands to spread your nutrients on?

**Mr Schillings:** The producer of the manure has to take responsibility to find new land when he loses land. Regardless of whether it's owned land or rented land or the manure is given to someone else, the producer of the manure has to find other land. There's lots of land around. It's just a matter of proper contracts, forward planning. If you're a good manager and you work with your neighbours, there's lots of land around.

**The Chair:** Thank you, Mr Schillings. We appreciate that.



## DAVID BRACKENRIDGE

**The Chair:** From our agenda, the next group Registered, David Brackenridge. Good afternoon, sir. We have 10 minutes if you wish to proceed.

**Mr David Brackenridge:** Thank you, Mr Chairman. Ladies and gentlemen, I'd like to thank you for allowing me the opportunity to comment this afternoon on Bill 81.

I come before you as an individual farmer. I belong to the OFA, and I'm an Ontario pork producer, but today I'm just simply representing myself to give you my viewpoint.

As I said, I'm a pork producer in Peterborough county, and I have been raising pigs for about 30 years. We use a liquid manure system and have two concrete storages. The manure is all spread on our farm, a rented farm and my father's farm, which is about a half a mile away.

I understand first-hand the need for proper management of nutrients and the need for a plan of how both our manure and purchased fertilizer are used in our cropping system. We soil-sample our fields regularly and last year started the baseline water well testing program. All elements tested in our water were well within accepted levels, and the E coli was zero.

We are enrolled in and have been validated in the CQA program for swine. We have also completed an environmental farm plan.

Our farm would be considered mid-size, or maybe by today's standards, even small. We have about 600 to 800 finishing pigs; that's our livestock.

In my mind, there are two issues that we must address in nutrient management. First of all, the general public must perceive and know that farmers are being good stewards and that we are using sound practices that ensure the health of our soil and water. I don't think today that the general public really understands that.

Secondly, there must be a satisfactory method of dealing with problems that arise when things go wrong or when there is flagrant refusal to adopt accepted management practices.

I am in agreement with the requirement for a nutrient management plan for all farms, in fact for all operations applying nutrients to the land, including cash crop operations, golf courses etc, as well as livestock farms. I am not in favour of graduated entry according to size, but I would allow a different type of plan for different-sized operations.

I believe that large and more complex operations require a more detailed nutrient plan, but everyone must have a plan of some sort. We must be careful not to require small operations to have to pay out large amounts of money in preparation of their plans because they simply can't afford it. The plans must be simple enough that any farmer can prepare them. Further, I feel that the costs of validation of plans should be borne by a provincial treasury. All members of the public benefit and, as such, should pay for the costs through general taxation.

The idea of having province-wide standards enforced by a provincial ministry is good. This will eliminate a patchwork of regulations that could vary from municipality to municipality across the province. Although I realize that today probably only the Ministry of the Environment has enforcement powers, it would be my hope that the Ministry of Agriculture, Food and Rural Affairs would have significant input into both the design and the enforcement of regulations. I think you all know that the rural community has a far greater comfort level with OMAFRA than they have with MOE.

There is no doubt in my mind that many, many operations will have to make capital expenditures in order to abide by the regulations that come out of this bill. Initially, farmers will not be able to extract additional returns from the marketplace that will pay back these required capital expenditures. Therefore, a system of grants, no-interest loans, low-interest loans and a reasonable length of time for full compliance will be needed. I'm not saying that the general public should pay the whole cost, but that they should share the cost, particularly in the early-to-mid stages until our market prices can respond to these additional costs.

Just a comment or two about spreading manure: I realize that spreading manure causes odour. On our farm, we only spread from Monday to Thursday and never on the weekend. We also take wind and holidays into consideration. This year, on one particular field that we were going to apply manure to, I decided I would inform the people fairly close by, and then I gave up after I realized that I had to get in touch with about a dozen people. I thought by the time I did that I would have the field all covered anyway.

1500

I live in a very rural area. When we built our pig barn in 1975, only one family lived within a mile of our farm. Today there are in excess of 20 families living within that radius. You can imagine the extent to which the planning of rural municipalities has impacted on our day-to-day practices.

Earlier I talked of my agreement with a nutrient management plan. In reality, I've always had a plan, not very formal perhaps, but still a plan. We keep a binder that includes field histories, soil test records, amounts and application dates of fertilizer and manure, pesticide applications, type and amount of seed used, planting dates, harvest dates and yields. This may not be very formal but does provide all the pertinent information.

It is my hope that you realize the increasing amount of paperwork that farmers are required to do. You might think that a nutrient management plan is not that big a deal for a farmer to complete. However, many farmers regard this as one more unwanted chore in a growing list of paperwork. With applications for CQA, environmental farm plan, MISA, disaster relief, GST reporting, workplace safety audit etc, farmers are beginning to wonder when they will have time to actually farm.

I'd like to conclude with a couple of comments on enforcement. I feel there is a need to differentiate

between a so-called honest mistake and complete non-compliance. In my mind there is a huge difference between an undetected underground storage leak and deliberate spreading violations. There must also be room for a contingency plan. For example, an overnight water leak in the barn can fill up a manure storage more quickly than expected. Also, abnormally high rainfall can fill up an outside storage rather quickly.

Enforcement officers must respect biosecurity protocols of individual farms and must show consideration and respect on entering farm premises. I'm not sure what to think of the proposed CERTs—county environmental response teams. I know most farm organizations have come out in favour of these, and I can see their usefulness. However, I think I personally would be very reluctant to sit on the committee and have to judge my peers.

Last, I urge you to exhibit a sense of co-operation, mutual respect and support as you move forward. Don't let these regulations start a witch hunt and don't create a snitch line.

Again, thank you for allowing me this opportunity to share my thoughts on nutrient management with you.

**The Acting Chair (Mrs Tina R. Molinari):** Thank you, Mr Brackenridge. You have effectively used up all of your time but if there are some pressing comments or questions from the committee members, I will allow some flexibility. Are there any?

**Mr Galt:** Just one super-quick one, if I may. It has to do with golf courses. How bad are golf courses, in your humble opinion? We don't spread manure on them, of course, but commercial fertilizers. Are they mediocre, small or big bad?

**Mr Brackenridge:** I'm not suggesting they are bad, Doug; I'm simply saying that they apply nutrients. Because they apply nutrients, they should have a plan, period. That's what I say about all farms. I don't think the size matters. I don't think it matters if you've got a big estate with no livestock and you're adding fertilizer, I think you need a plan.

**The Acting Chair:** Thank you very much for coming today and sharing your views with the committee.

#### ASPHODEL-NORWOOD NUTRIENT MANAGEMENT COMMITTEE

**The Acting Chair:** I will now call on the next presenters on our list, the Asphodel-Norwood Nutrient Management Committee. Would you please come forward. Please begin by stating your name for the record.

**Mr John Steele:** My name is John Steele. I am making this presentation both on behalf of the Asphodel-Norwood Nutrient Management Committee and also as a farmer within the township itself.

Overall, our committee and the township have been working on our own nutrient management guidelines for the last nearly two years and many of the things that are outlined in the act are endorsed by the work we've already done. Best management practices apply both for

the common good and also for a profitable and efficient farm organization.

Some of the key areas: I don't have a written submission for you guys to take away with you this afternoon, because we look at this in two ways. We have a range of systems of graduated levels where compliance is determined. At the lower end there is a requirement that nutrient management plans be kept by the producer for random audit, in the same way you are stated with the task of compiling and taking information back for the committee you are obliged to stand on at this moment in time. So there is an obligation for you to be recording information at this meeting and taking it back.

I don't have the authority right now to check that you're making notes on what I'm going to say today. In a democratic process, I trust you are taking the information—all of you—diligently to take it back.

**Mr Galt:** For clarification, Hansard is recording it all. You can get it on a Web site and you'll see what you said in Hansard.

**Mr Steele:** OK, but I'm saying, from an issue here, the compliance, what is important, is that there is a system in place, as you've just outlined to me, that is fair and equitable. This will take quite a lot of—you have a complex system here and it's great. It's dealt with. But I'm just putting you in a reverse situation for implementation and enforcement of the standards that you put in place for producers.

We believe that an appeal process is an important part of this and that OMAFRA has a significant role in that, as well as the MOE, along with enforcement. Biosecurity and the increasing production requirements of farms across Ontario is an important issue that has to be respected and understood.

If we look at the wording for an intensive farm, I, as a farmer, have my farm soil analyzed. I was talking with one of the leading soil analysis companies in the province and they told me, within 90% accuracy, that if we gave them a soil map of land in Ontario, they could tell us where the historic farm sites were located. We've looked upon this area of smaller, responsible family farms, but actually in the soil analysis breakdown, the majority of nutrients were deposited within the first 15 to 20 acres of the homestead. So when we look at nutrient concentrations, although these smaller family farms are viewed as more in keeping with the requirements of the land, we have to realize that the nutrients themselves—although many of these operations were a closed loop, they weren't buying artificial fertilizers. The volume and cost of handling manure for the relative nutrient value is expensive compared with many artificial fertilizers that are available today. There is very little cost benefit from manure storage in production terms.

We're looking for exemptions initially for existing structures, for compliance, because of the costs. Other people I'm sure have talked to you about some form of financial assistance in implementation of the guidelines or the rules that will be put in place.



Another of the issues is the nutrient management plan which we're talking about being implemented for all stages. From my personal perspective, I'm a sheep producer. We have over 1,000 ewes here in the province, which is a large operation in sheep terms. We practise intensive grazing management. We have completed the nutrient management plan, the OMAFRA program, for the last four years. But there has to be a fudge factor to account for grazing, because this program has been developed in western Ontario, where the majority is cropping. If this is to be put in place across the board, fudge factors are very difficult to fairly and accurately police. There would have to be some work, some money maybe put aside to complete the picture for some of the other types of agricultural production around the province.

Overall, we recognize the work is being done on the act and as a whole we feel it is a correct and a good step forward with a fair balance. There are a few issues there that I'm sure you've been reminded about before. Thank you very much.

1510

**The Acting Chair:** Thank you very much for your presentation. We have just a little over three minutes for each caucus to ask some questions and make some comments.

**Mr Peters:** Not dealing so much from a municipal perspective, but your own personal perspective, you have 1,000 ewes. You rely on the ewes to spread your nutrients in many ways.

One of the things that we have to consider or will be considered will be—there are a couple of issues. One is going to be 365-day storage or—

**Mr Steele:** Or 240 days.

**Mr Peters:** Well, we don't know what that's going to be. That's going to be a factor for you.

The second one for you—and I didn't mean "ewe"; hopefully people will understand which "you" I was talking about. I'm getting a little punchy here. But the other factor, and it is something that we've got to consider, is that we are talking about setting calendar dates, or the potential is there for calendar dates, when one can and cannot spread manure. If we say, for example, you can't spread manure December 15 to April 15, what are you going to do with your ewes? Technically if you leave them out there grazing and they do their business and spread the nutrients, you're breaking the law. At least that's my interpretation; I could be wrong on that.

So, first, what are you going to do about storage? Secondly, do you have concerns that if we put a calendar date in, you could be technically breaking the legislation because your ewes are spreading nutrients when they shouldn't be?

**Mr Steele:** There are two points there. There's a range of production systems in any production agriculture. Some sheep are housed 365 days of the year; some are outside 365 days of the year. There's a variation in that.

Sheep outside on frozen ground—or cattle, any live-stock—is an issue that I, as a producer, personally don't encounter because, come November 1, my sheep are inside and they don't go out until the 1st of May. If I'm deriving nutritive benefit from the land, there's vegetative growth, the majority, only during that period. There are some other options of stockpiled grazing which are being researched by OMAFRA, by the University of Guelph, New Liskeard research station, which would be contradictory to that position that you've just suggested. That is something that the beef producers would have an issue with too. The same would apply.

If you house animals in a barn on a dry pack, from my understanding, the manure storage, the volumetric capacity of the pack within the barn, can count as the manure storage, as long as water is not able to enter that facility and then take the leachates out. If we had a barn as big as this banquet hall and we kept our sheep in over that period, the pack that they stand on themselves would be deemed as the manure storage, the same as a pit below a hog barn. Does that answer your question?

**Mr Peters:** I was just trying to find out how you would react.

**Mr Galt:** You described that extremely well, by the way, keeping them in the manure pack, the fact that that's a storage, and whether they're out pasturing in a bush or whatever.

I appreciated your comments on biosecurity. That's come up very frequently.

I thought it was interesting, your comments about, "Give me the map of Ontario and where the barns were, and we'll show you where the nutrients have been applied in the past and what the levels are." That's part and parcel of the need for nutrient management plans, from what we're hearing. The field behind the traditional barn will be tested, and the field in the back 40 will be tested. The one in the back 40 is where the nutrients should be going, probably. We're looking at nutrients in the soil plus the nutrients from the manure that's going to be applied and/or commercial fertilizer or whatever, less whatever their crop will consume; that should be a balance for a program.

**Mr Steele:** That's right, and that was the point I was trying to make. But the other perspective is, even in those days we had shrewd business operators. With a stone boat or whatever to take the manure out in the winter, they had a finite value on that manure as a nutrient source. This is what we're discussing, some of the manure storage issues.

There is a value to the manure in a nutritive capacity, but it is very bulky and it has some issues with maximum utilization, through how it is applied, for runoff and other sorts of things, odour. It's not a particularly easy product to deal with, with a finite cost. Even those heritage farmers knew this was an issue, and it was not something where they were able to create a fantastic budget on their own operation to say, "Yes, we can afford to take it to the back." There were some restrictions through this commodity that was being produced that limited their style of



management of that. We today as farmers haven't moved a whole heap further ahead with fossil fuels and moving of this stuff. It's still an issue, and it's not something that's been created by modern farmers; it's something that's been in agriculture for a very long period of time. For all the costs to be put to the farm population at this moment in time would maybe not be correct.

**The Acting Chair:** Thank you very much, Mr Steele, for sharing your views with the committee this afternoon.

DON WINSLOW

**The Acting Chair:** The next on our agenda as presenter is Don Winslow. If you could please begin by stating your name for the record. I understand we don't have sufficient copies for the members, but I've been assured by the clerk that they will be sent to your offices.

**Mr Don Winslow:** Thank you, Madam Chair, ladies and gentlemen. First, I'd like to offer my support to my colleague Dave Brackenridge, who was the second-last presenter. I certainly appreciated his comments.

I am Don Winslow. I am, with my wife, co-owner and operator of a corporate hog farm. We employ three people full-time and two part-time, as well as our family labour. Our operation consists of a 750-sow farrowing operation and a 2,000-head nursery. To provide the feed and land on which to utilize our manure as a fertilizer resource, we grow crops on approximately 420 acres. Of these, 160 are rented.

About a year and a half ago, I spoke to one of the hearings that were held on intensive agriculture, as did many others. As part of the farming community, we waited for results to be released so that they would lift a cloud of uncertainty around this whole issue of manure and nutrient management.

Our municipality, following the lead of many others, has put in place an interim bylaw to prevent the establishment of new livestock facilities or the expansion of livestock facilities until a nutrient management bylaw was in place. I was told that we were close to having the report released, and then of course Walkerton happened. I find it ironic that an occurrence that, while tragic, had nothing to do with an intensive livestock operation became the catalyst to send the whole matter of nutrient management sort of back to the drawing board, resulting in the present bill we are discussing to give widespread powers to government agencies to regulate and enforce the utilization of livestock manure and biosolid wastes.

1520

However, I do support most aspects of the bill and I offer the following opinions, in no special order of importance. But I offer them in light of the fact that this, I believe, is only one facet of an overall effort to ensure clean and safe drinking water for the province now and in the future.

The first point is that I believe many individuals, and perhaps even some farmers, have misled the government and the public in their assertion that intensive livestock operations pose a greater threat to our environment than

the so-called traditional agricultural practices. I'm only going to offer one example. Right now, while I cannot get a building permit to even increase one end of my barn by 10 feet because of this interim bylaw, there is really nothing to prevent me from establishing a pasture-based hog management system. I could run wild boars and not need any building permits, just good fences.

Some animal-welfarists would applaud the fact that these animals would run free and not be confined in buildings. I wouldn't need any liquid manure storage because they would dump it right on the land. I'd need quite a few animals in order to make a living from the enterprise. The pasture land on which they ran would become trampled and torn up because, after all, they are pigs. So when the rains came, the manure and loosened soil would start to run by gravity with the water and find its way into any watercourses or bodies of water that might happen to lie in its path.

By contrast, in my intensive operation, I store my manure in steel-reinforced concrete compartments until it is applied to my cropland. The rate of application is determined by the needs of the crop being grown, the nutrient analysis of the manure, and the soil test results for the land. In growing our crops, we employ minimum tillage practices in order to ensure that the soil is not washed away by heavy rains. Yet right now, operations like ours are the ones under scrutiny.

I might add here that I don't believe you can use the term "family farm" in any way to define whether or not an operation is intensive. Recently, I was at a seminar having to do with farm employment which was all hog farms, and one operation, a family farm, had 60 employees. Others had as few as one. So they're all over the place. In my opinion, if farm management is done by farm family members or non-family members, one is as competent as the other.

My second point is that shallow wells have always been risky in the country. Today, the well drillers tell me that no one they know of is putting one in. Of course, their problem is they have a high relative risk of contamination from shallow groundwater supplies. The number one risk to shallow rural wells is rural septic systems. They're particularly risky in periods of high water table such as in the spring and during periods of high rainfall. There are factors like the relative location of the wells from the septic systems and the degree to which the wells are sealed that are, of course, important factors as to how safe or unsafe they are.

In my opinion, all the regulations enacted by this bill will not appreciably lower the risk of groundwater nitrate levels being higher than acceptable in some rural wells. This is due to the many other sources of nitrate that can occur in a rural groundwater system, things such as the decomposition of biomaterials, the decomposition of nitrogen-fixing crops such as soybeans or clover, and the natural mineralization of groundwater by nitrate salts. So I don't see how MOE can rule that rural shallow wells have had increased nitrate levels and automatically say it's because of the activities of a farm, without having



any prior base levels of nitrate to compare them to. The fact that I know MOE has required a hog farmer to pay the cost of providing new deep wells for his neighbours despite the fact that these neighbours have septic beds and shallow wells and no base levels of nitrate to compare with makes me very nervous about MOE as an arbiter and enforcer of these rules.

My third point is that I oppose the suggestion that we need detailed hydrogeological studies of an area or site before allowing a building permit. Perhaps there are exceptions where you might need one. For areas known to be part of the immediate watershed for a municipality's water supply, it might make a difference. In nearly all cases, simply digging some test holes or knowing the characteristics of an area will determine the course of action. I would say that in grey areas, give the farmer at least the option of voluntarily installing an impervious liner and eliminating the high cost of doing the hydrogeological study first.

Finally, I raise a difficult subject, and I wouldn't have written this had we not had the activities of September 11. In light of what has happened in recent days, and if we're interested in safe municipal water supplies and safe rural wells, we can no longer ignore the real and insidious threat of sabotage or deliberate acts to jeopardize the safety of our water supply. It is well known that some of the more radical cells of the animal rights movement have in the past made it known that they consider their cause worthy of terrorist acts. If you doubt what I'm saying, check with the Ontario Farm Animal Council. They have lots of information documented. Of course, their target would be chosen to point the finger at a large corporate farm. I'm not sure what we should make of this threat except to say that we have to be aware that acts of this nature could happen, be ready to deal with them, and I think law enforcement agencies should be aware of the activities of some of these groups.

In conclusion, I support the comments that Ontario Pork, our commodity representative, has already made on this bill. I'm sure the agricultural community of which I am a part will do its part to help contribute to a clean and safe water supply. After all, it's been pointed out already that our own wells are probably closest to the action. But please allow us to operate our farms efficiently and sensibly. Try not to weigh us down by an excess of paperwork, costs and bureaucracy.

**The Chair:** Ten minutes goes pretty fast. I don't know whether any member wants to make a brief comment. We've pretty well used up the 10 minutes.

**Mr Galt:** Just one, if I might: there was a study on wells carried out in the late 1980's, early 1990's. It was wells, some pushed down, some existing, versus ones pushed down in wood lots, and there was a difference in nitrate levels that was considered significant at that time. Your point is well taken before and after, and that's real proof that—

**Mr Winslow:** Some entire counties in the US have high-nitrate wells strictly because of peanut farming.

**The Chair:** Thank you, Mr Winslow.

## ASSOCIATION OF CONCERNED CITIZENS FOR OUR ENVIRONMENT

**The Chair:** The next delegation—according to the agenda this is our last delegation—is the Association of Concerned Citizens for Our Environment. Good afternoon, sir. We have 15 minutes. If we could have your name for the Hansard.

**Mr Bryan Welsh:** My name is Bryan Welsh. For those who don't know, I've actually got copies for all here. I'd appreciate if they were handed out afterwards so that you do, in effect, listen to me. That would be great.

I speak to you on behalf of the Association of Concerned Citizens for Our Environment, affectionately known in the area as ACCE. We represent over 500 members from the local area of Trent River, which is about 30 minutes east of Peterborough.

ACCE is also a member of the ALERT coalition, the Agricultural Livestock Expansion Response Team, which has joined forces with the Sierra Club of Canada and which was represented at the Walkerton Inquiry, phase II.

ACCE was formed in 1999 as a result of a local threat to our water quality and way of life with a 2,500-sow facility proposed in our community. The proposed site held up as an embarrassing example of how lax and narrow our current legislation is: a site located 850 feet uphill from the Trent River; upstream from Campbellford, Frankford and Trenton municipal water intakes; on shallow, sandy soil; uphill from several shallow-dug drinking wells; within view of over 15 residences and within a mile of 100 more; in an area of limited tillable soil—surely a significant risk, to say the least.

If not for municipal intervention, this industrial-sized facility would be there today and we would all be sorry for it. This municipality realized how inappropriate this location was, with potential environmental, residential, tax base and tourism impacts, all very difficult to comprehend through a phone line from Guelph.

1530

I also speak to you as a father concerned about our environment, which we are entrusted to pass on to our children. I fear that our legacy will be undrinkable groundwater, unswimmable beaches and unbreathable air. Surely we have the intelligence and responsibility to learn from the mistakes of others.

It should be noted that ACCE is comprised of farmers, cottagers, business owners and permanent residents, who all are avid supporters of agriculture in Ontario. Make no mistake about it, agriculture is a vital part of Ontario and its communities. At this time, we have real concern for the new threat this new breed of intensive livestock operation poses to our environment.

How else could we feel, given the existing regulation of farm practices? They do not require rigorous site investigation prior to farm siting. They do not require the use of best management practices in the farm operation. They do not prohibit manure spreading at times when the risk to the environment is greatest. They do not require



leak monitoring for large liquid manure storage facilities. They do not require monitoring of surrounding surface waters and groundwater. And they do not require contingency plans in the event of a facility failure or some unforeseen weather conditions.

ACCE has been part of the move for more restrictive legislation from day one. Our two-year lobbying for a provincial moratorium until we could be assured that intensive livestock operations are environmentally sound through a comprehensive risk assessment has fallen on deaf ears at the provincial level. The result in Ontario has been the creation of a window for operators to quickly build more facilities before potentially more restrictive legislation is passed, and that window has proven to be a very large one.

With that said, ACCE is pleased to see that progress is being made and appreciates the opportunity to once again have input. The following are some specific recommendations by ACCE on the proposed Bill 81 and its implementation.

The first one has to do with enforcement. While Bill 81 allows for enforcement by the Ministry of the Environment and OMAFRA, we believe the Ministry of the Environment should be responsible for taking the lead role in enforcement. OMAFRA's primary mission of supporting and encouraging agricultural growth could conflict with environmental protection needs. The ability of OMAFRA to effectively regulate the agricultural industry it is entrusted with promoting and developing has been questioned by many groups and individuals, including the Environmental Commissioner of Ontario, Gord Miller, in his special report, *The Protection of Ontario's Groundwater and Intensive Farming*. The MOE's primary mission and skills are environmental protection. With this in mind, ACCE recommends that the regulations be drafted with significant MOE input and with compliance enforcement left solely with the MOE.

In terms of environmental risk assessment, it is critically important that nutrient management standards require a full hydrogeological assessment for all large-scale livestock operations. Research has shown that pathogenic bacteria and viruses can travel significant distances under certain geological conditions. Each site must be assessed for depth to the water table, groundwater flow direction, soil type, subsurface geology and presence and location of field tile and drain outlets. Provincial vulnerability mapping of high-, medium- and low-risk areas should be used to identify regions that need to be rigorously protected and form the foundation for a long-term development plan within this province.

Nutrient management plans, as currently defined, are not the answer. Current nutrient management plans focus solely on the net take-up of nutrients, trying to balance the nutrients applied with the needs of the crops being grown. There is no mechanism in an NMP process for evaluating the impact of pathogens in manure on ground and surface water. In addition, the present bylaws in Ontario do not require the applicant to provide any background data concerning local water quality, nor monitor

water quality at any point in the future. This is an obvious gap if our objective is to ensure public safety and minimize any adverse impact to the environment.

Regarding minimum separation distances, sites being considered for any intensive livestock facility should address more than MDS requirements, which currently are aimed primarily at odour. They should address soil conditions and subsurface soil structure, such as bearing capacity, soil permeability and the depth and extent of aquifers. Working with the hydrogeological assessments, as outlined above, as well as with the respective municipal land use plans, MDS should also include maintaining adequate distances from environmentally sensitive landscapes, such as waterways, and consider the potential impacts on neighbouring land uses. The current tunnel-vision approach to location approval must be addressed if we are proactively to manage the inherent conflict associated with ILOs in the future. If we do not address this, we will continue to have conflict.

In terms of municipal authority, ACCE supports the concept of a strong province-wide set of regulations that provide a common environmental protection framework. However, we feel strongly that local municipalities must be given the authority to augment this legislation with local bylaws that recognize local needs or provide further environmental protection. Any such bylaws must not decrease the environmental protection provided by the province, and municipalities should be responsible for enforcing their additional provisions.

In the last few years many municipalities have been forced by a lack of provincial leadership to develop bylaws and strategies to govern the siting and operation of large livestock facilities. Some of the municipal regulations created, such as single-site caps on the animals allowed per facility, are designed with the needs and vision of the constituents of individual municipalities in mind and reflect the variability in environmental, geographical and social concerns across Ontario. The imposition of minimum provincial regulations that supersede well-thought-out and greatly supported local solutions will not result in the greatest protection of water resources and the environment at large and certainly will not bring any peace to the conflict associated with large-scale operations and our communities.

We recommend a change in the wording in part VII, subsection 60(1) to read, "A regulation supersedes a bylaw of a municipality or a provision in that bylaw if the bylaw or provision is less stringent than the regulation."

Technology: ACCE urges the standing committee to ensure that Bill 81 lays the foundation for the implementation of new technology in the areas of nutrient containment and handling. We must move beyond diluting manure with fresh water, stockpiling it in massive open pools and then saturating the land, even though we know a significant amount reaches our precious surface and groundwater. Alternative technologies are both readily available and relatively inexpensive, and would assist greatly in reducing the environmental impact on the surrounding community.



Given what we've learned from other jurisdictions, Ontario has the opportunity to be a Canadian leader in moving toward what we know is right. Given our population density, diverse land use and potential impact on significant freshwater resources, Ontario has the responsibility to move quickly in changing our ways. Liquid manure systems should be put through intense scrutiny for all future intensive livestock operations. At the very least, let's ensure that odour-reduction technologies like composting and covered lagoons achieve critical mass versus being on the distant fringe. As with any new initiative, incentives and resources must be made available to encourage compliance and offset the costs to farmers for implementing this technology.

Lastly, regulation input: We look forward to the development of specific standards and regulations governing the operation of intensive facilities as touched on in our input to the committee. As with all pieces of legislation, the devil will certainly be in the details. Many issues are unresolved, and it is unfortunate that they weren't laid down in the original framework in Bill 81. Land ownership requirements, livestock density limits, proximity to water courses, manure distance haulage limits, manure storage capacity requirements, limitations on the time of year spreading can occur, water monitoring and buffer zones to waterways and other sensitive areas have all got to be addressed. We strongly recommend wide public consultation on these regulations to ensure that the views of all stakeholders are once again taken into account.

In conclusion, Bill 81, as well as the evidence presented at the Walkerton inquiry, reflects the serious deficiencies in our current legislation. Regulations and enforcement in the province of Ontario to provide adequate environmental protection are more than needed. ACCE once again encourages the province to rapidly implement a moratorium on the further construction or expansion of ILOs until the new regulations are in place.

I just want to leave you with one thought from the Attorney General of Missouri, Mr Jay Nixon, after intensive livestock facilities wreaked havoc on their jurisdiction: "Where we thought we could give tax breaks and incentives to these companies and they would honour their agreements, we were wrong. Where we thought they would operate under the environmental laws of the state, we were wrong. Where we thought they would bring jobs they brought workers willing to work for less and the social challenges that are associated with that situation. Where we thought we could operate without odour regulations, because they would be good neighbours, we were wrong."

Thank you for your time.

1540

**The Chair:** Thank you very much, Mr Welsh. We have about two minutes for each party. I'll begin with Mr DeFaria and then Mrs Molinari.

**Mr DeFaria:** I represent an area in the city and I'm very concerned about the environment. I represent Mis-

sissauga, which has a lot of smog and pollution around Toronto.

**Mr Welsh:** As a Quaker employee, I'll be moving into your jurisdiction, sir.

**Mr DeFaria:** Is that right? My question to you is, on a scale of one to 10, how do you grade the problem, for example, with the nutrients from the farmland overflowing into the water system, compared to the discharge of raw sewage in a city like the one that was mentioned, I think Kingston? How do you grade it as far as an environmental problem?

**Mr Welsh:** The only thing about that question that troubles me is that you're asking me to rate a bad example with a bad example. Unfortunately, I won't be put in a corner to justify lax intensive farming regulations because there is even a worse problem or not a worse problem. I believe that everything from pesticide use to raw sewage being dumped in our Great Lakes systems—they all need to be addressed. With my initial input, I believe in Hastings, what I kicked off with is, we should stop getting caught up with other issues. We have an issue on the table right now and let's wrestle it to the ground. The good news is there's work for standing committees to tackle for years to come.

**Mrs Molinari:** Thank you very much for your presentation, Mr Welsh. Have you been here, listening to some of the other presentations?

**Mr Welsh:** Unfortunately, I have not. I apologize for that.

**Mrs Molinari:** OK. It's interesting because, as a committee going through the consultations, we're trying to take what everyone is saying and incorporate it into the regulations and into the development of what this legislation will be. So where there are some very opposing views, it'll be difficult of course for the legislation to accommodate everyone's views. Coming from an environment perspective, of course your recommendation is that the compliance and enforcement be solely from the Ministry of the Environment. Those who have said that it should be solely OMAFRA, I've asked them, "Is there a possible compromise?" because I believe that both ministries should play a role in the enforcement and the compliance of it. In your mind, is there a compromise where both—because, let's face it, those in OMAFRA know much more about the farming industry and agriculture. Where can these two work together to come up with a compromise that you could live with?

**Mr Welsh:** I think the role of OMAFRA, to be totally honest, is a consultant to the farmers. That's primarily the role they're playing today. I think right now their powers overstretch where they should. I think that if OMAFRA were to be able to play a consultant role—in other words, how do we have engineering solutions around these issues that we speak of?—I think they can play a lead role in that. I think, at the end of the day, though, who gets to mark the report card has got to be the Ministry of the Environment. Any other way is a conflict of interest and we've got the fox looking after the hens. I just don't think that's appropriate.

**Mrs Molinari:** Another point that you made—and not having your presentation in front of me, I can't quote directly, only by the memory of what you've mentioned—is that the province-wide regulations should be put in place and that local authority be given to some municipalities in the development of bylaws, but only if those bylaws are going to be further protecting the environment. From where I'm sitting, I'm thinking that's totally one-sided. If you're going to say that bylaws should be in place for local autonomy, then they should be what the local autonomy is. But I'm getting the impression that it's only totally if it's going to further protect the environment, and the result might be further impositions on the farmers.

**Mr Welsh:** The thing is that water doesn't know any boundaries. It doesn't know when it just passed through Hastings county and entered the next county. The federal level, in my opinion, should be playing a role here. The provincial level should be playing a role. But it's all got to do with laying down a minimum framework. Where the municipalities come in place, I believe they should be able to plan their own destiny and reflect their very special situation, which may have to do with tourism and where they want to develop as a community. It may have to do with very special geographical conditions which exist, which are not encapsulated and couldn't be encapsulated by a provincial broad brush. So I don't think what I'm saying is in conflict with the thought—I think the province plays a role at a minimum level and I think the municipalities should be free to take that to a new standard, given their very unique conditions.

**Mr Peters:** I appreciate your comments. I think it's good for the committee to hear specifically from somebody who was involved in the siting of a new operation.

With that operation, 2,500 head, it was obvious that objections came from the community. The 2,500 wasn't acceptable. Was there a minimum acceptable level, or was it, "No farm"?

**Mr Welsh:** This has been an interesting question, because I know right from the very first consultation process that we were involved with, we were all searching for a number. It's almost like getting lost in, is municipal raw sewage worse than ILOs, or are golf courses worse than ILOs? If we spend all our time searching for a magic number, we're never going to get

any work done. I think what we all need to come to terms with is, let's pick a number.

**Mr Peters:** OK, we've been through this from day one, from a definition of a family farm to a definition of an intensive livestock operation to the egg producers who are sitting behind you who, in my mind, are a family farm, but they're also an intensive livestock operation. What do you define as an intensive livestock operation?

**Mr Welsh:** Do you know what? I have absolutely no issues with corporate versus family-owned—and you notice that term didn't even come up, because I agree with the previous presenter; there are plenty of families that are depending on intensive livestock operations. It needs to be defined based on animal density. So it has to be number of head per acre. Right now in our municipality we have identified a cap in terms of animal units that would define an intensive livestock operation, and I believe it's 500 animal units defining intensive. That's what I have in front of me.

**Mr Peters:** The point you made about the local needs and going beyond the legislation, I want to understand you. Are you saying that there are some local circumstances that may arise because of where it's located regarding a water recharge area? Are you saying that local circumstances need to have the ability to supersede the legislation?

**Mr Welsh:** Absolutely. Let's hop in the car and take a drive around Ontario. It'll only take us a day. Let's drive to places in western Ontario, where the fields are vast and grade A land is available. Then let's take a drive by the Trent River situation, and you will see two very different landscapes, soil conditions, access to water—you name it. You tell me whether one piece of paper should regulate the entire province. When we're dealing with nutrients affecting water quality, it's ridiculous.

**The Chair:** I wish to thank you. We appreciate the Association of Concerned Citizens for Our Environment coming before this committee. This concludes the September 20 hearings of the standing committee on justice and social policy. I wish to let the committee know that the bus is now ready to leave. We have a plane to North Bay at 5:30 and the hearings tomorrow in North Bay commence at 9:15, to be held in the Best Western, North Bay. Seeing no further business, today's proceedings are now adjourned.

*The committee adjourned at 1549.*











*Continued from overleaf*

Mr Hubert Schillings .....	J-484
Mr David Brackenridge.....	J-486
Asphodel-Norwood Nutrient Management Committee.....	J-487
Mr John Steele	
Mr Don Winslow .....	J-489
Association of Concerned Citizens for Our Environment .....	J-490
Mr Bryan Welsh	

## **STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY**

### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

### **Substitutions / Membres remplaçants**

Mr Doug Galt (Northumberland PC)

Mr Steve Peters (Elgin-Middlesex-London L)

### **Clerk / Greffier**

Mr Tom Prins

### **Staff / Personnel**

Mr Avrum Fenson, research officer,  
Research and Information Services



# CONTENTS

Thursday 20 September 2001

<b>Nutrient Management Act, 2001, Bill 81, <i>Mr Coburn</i> / <b>Loi de 2001 sur la gestion des éléments nutritifs</b>, projet de loi 81, <i>M. Coburn</i> .....</b>	<b>J-441</b>
Peterborough County Cattlemen's Association .....	J-441
Mr Samuel Wood .....	
Township of Cramahe .....	J-443
Mr Elie Dekeyser .....	
Innovative Farmers Association of Ontario.....	J-446
Mr Eric Kaiser .....	
City of Kawartha Lakes .....	J-448
Mr Dennis Zekveld .....	
Mr Dave Wellman .....	
Safe Sewage Committee.....	J-450
Ms Karey Shinn .....	
Citizens for a Safe Environment.....	J-454
Ms Karen Buck .....	
Rural Advisory Committee of the Municipality of Brighton.....	J-456
Ms Lucille Coyne .....	
Mr Kirby Hakkesteegt .....	
Mr David Dorland .....	
Township of Ramara .....	J-458
Mr Basil Clarke .....	
Ontario Agri Business Association .....	J-460
Mr Mike Cooper .....	
Prince Edward County Council; Prince Edward County Agricultural Advisory Committee.....	J-463
Mr Brian McComb .....	
Mr Michael Heuving .....	
Drain Poultry Ltd.....	J-465
Mr Vance Drain .....	
Property, Planning and Land Use Committee, Northumberland Federation of Agriculture .....	J-467
Mr John Boughen .....	
County Regional Environmental Evaluation Ko-alition .....	J-470
Ms Linda Roberts .....	
Township of Stone Mills .....	J-472
Mr James Macdonald .....	
Mr Robert Clancey .....	
Lake Simcoe Region Conservation Authority .....	J-474
Mr Michael Walters .....	
Safe Water Group of Prince Edward County .....	J-476
Mr Bruce Cattle .....	
River Valley Poultry Farm Ltd .....	J-478
Ms Pauline Embury .....	
Mr Elwyn Embury .....	
Clarington Agricultural Advisory Committee.....	J-480
Mr Dave Davidson .....	
Lennox and Addington Federation of Agriculture .....	J-482
Mr Iain Gardiner .....	

*Continued overleaf*

A20N  
X614  
577



J-18

J-18

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Friday 21 September 2001

# Journal des débats (Hansard)

Vendredi 21 septembre 2001

**Standing committee on  
justice and social policy**

Nutrient Management Act, 2001

**Comité permanent de la  
justice et des affaires sociales**

Loi de 2001 sur la gestion  
des éléments nutritifs



Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

---

Hansard Reporting and Interpretation Services  
3330 Whitney Block, 99 Wellesley St W  
Toronto ON M7A 1A2  
Telephone 416-325-7400; fax 416-325-7430  
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation  
3330 Édifice Whitney ; 99, rue Wellesley ouest  
Toronto ON M7A 1A2  
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430  
Publié par l'Assemblée législative de l'Ontario

## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Friday 21 September 2001

*The committee met at 0914 in Best Western, North Bay.*

## NUTRIENT MANAGEMENT ACT, 2001

LOI DE 2001 SUR LA GESTION  
DES ÉLÉMENTS NUTRITIFS

Consideration of Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts / Projet de loi 81, Loi prévoyant des normes à l'égard de la gestion des matières contenant des éléments nutritifs utilisées sur les biens-fonds, prévoyant la prise de règlements à l'égard des animaux d'élevage et des biens-fonds sur lesquels des éléments nutritifs sont épandus et apportant des modifications connexes à d'autres lois.

**The Chair (Mr Toby Barrett):** Good morning everyone. Welcome to yet another meeting of this tour of the standing committee on justice and social policy for today, Friday, September 21, 2001. This is the last day of summer, if I'm not mistaken. This committee has been on the road since the end of August with both Bill 51 and now Bill 81. I certainly want to thank the members. We are a little thin on the ground today. I should explain this. It is very difficult to get volunteers, MPPs in particular, to be away from their riding on a Friday. We did this last Friday. Friday is the day that you're in the riding and there's an expectation that you are working in your riding with your constituents. North Bay is the last stop on this tour. All three parties were very pleased and had requested that we focus on small-town and rural Ontario. As a committee, I guess we've visited Ottawa twice now. We've visited downtown Toronto twice. None of us are from downtown Toronto, but it was a pleasure to be in towns like Holmesville down in Huron county, Owen Sound, Caledonia and St Thomas.

We are meeting today at the Best Western in North Bay. Again it goes without saying, there are three flags in front of this hotel that are at half mast. I noticed coming into the city of North Bay yesterday a number of signs out on the highway stating, "God Bless America." This committee has certainly observed that as we've travelled Ontario since a week ago last Tuesday. It has been ever-present on people's minds. Ontario just concluded a by-

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Vendredi 21 septembre 2001

election last night and I understand that in that by-election, door-to-door discussion was dominated by what happened in the United States.

Our agenda for today continues with consultation on Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts. We have a number of delegations this morning.

## GAGNON RENEWABLE RESOURCES.

**The Chair:** With respect to our agenda, our clerk has been in touch with Gagnon Renewable Resources. I would ask Gagnon Renewable Resources if they could approach the witness table. Good morning, gentlemen. We would ask if you could give us your name for the purpose of our Hansard recording. We have 15 minutes.

**Mr Rick Gagnon:** Good morning, everybody. I'm Rick Gagnon, from Gagnon Renewable Resources, Manitoulin Island, Gore Bay.

**Mr Warren Maskell:** I'm Warren Maskell with sales for Gagnon Renewable Resources.

Dear Mr Chair and committee members, we would like to thank the committee for this opportunity to speak and be heard with regard to Bill 81. My name is Warren Maskell and with me is Richard Gagnon, president of Gagnon Renewable Resources. We have supplied each of the committee members with a copy of what we will read from. Gagnon Renewable Resources Inc is a Canadian company that is committed to representing technologies that have a positive impact on our environment. We've attached a company profile in the brochures that we sent out with you.

The Nutrient Management Act is intended to establish guidelines, restrictions and inspection protocols to the agricultural sector. As citizens firstly, and suppliers to the agricultural sector secondly, we welcome this legislation. Our purpose today is to outline briefly a few of the technologies we have to offer. Each of these technologies can solve one or more of the issues that a farmer or production facility faces in adhering to a comprehensive nutrient management plan. It is our hope that this committee will consider the future solutions in their decision-making process. The interpretation of existing guidelines is such that merely moving straw from one farm to



another can be construed as requiring a certificate of approval. We will provide a clearer example of this a little later.

The four technologies are bioreactors, biological remediations, absolute filtering and dewatering processes. The bioreactor acts as a large aerobic composter. All organic materials can be composted as long as the correct carbon-nitrogen, or C-N, ratio is maintained. Manure, processing pulps, yard waste and even carcasses can be processed. The key, however, to successful composting is in creating and sustaining an environment where the conditions are ideal for the material to be composted. The bioreactor we market is a fully automated, large, rotating drum that is constantly monitored for temperature variations and can automatically speed up or slow down the rotation of the drum. Input to the machine can be either in a continuous-feed mode or in batches.

0920

The process is successful because we can ensure that three distinct biological stages take place within the drum. The first stage is the psychrophilic stage, where the bacteria are active at between 7°C to 12°C. Then the mesophilic stage proceeds up to about 33°C. Next, and most important, is the thermophilic stage, where the biological activity generates heat of between 70°C and 80°C. Toward the discharge end of the unit, the mesophilic stage then reactivates and the material cools before being finally discharged.

The input of new product displaces the product within the bioreactor in a continuous manner. This process can take as little as 24 hours to complete. With this process, we are able to successfully kill all the pathogens and weed seeds. A relatively small bioreactor, six feet diameter by 32 feet long, can process approximately 22 tons per day. The bioreactor also features a biomass filter which eliminates any odours from the composting process. We are currently developing a portable unit that can be brought to the farmer who has to address an existing manure pile. This portable unit could also be used in conjunction with a properly designed holding area for manure. When this holding area was approaching capacity, the portable unit could be brought on site, process the material and then be relocated.

An example of existing legislation—or an interpretation of—has a potential impact here. Consider a dairy farmer with a bioreactor who needs to add straw or hay as a carbon source. If the farmer has his own supply on his own property, he or she can add it and the process produces a pathogen-free soil supplement. Now consider the same dairy farmer without a supply of hay or straw. For this farmer to import the material from another farm and add it to his bioreactor would require a licence for hauling hazardous waste. Surely this is not what the current legislation intended, but nonetheless we have confirmed this with persons at OMAFRA.

Another problem is with respect to the storage of compost material once it has been processed. In less efficient systems, such as windrow or in-vessel, not all of the material is composted. The requirements are that

there is a holding period of 15 to 25 days to ensure that there is no undesirable biological activity still taking place. It does not seem fair that a superior system, where it can be verified that the temperatures and amount of time required have been met to kill all the harmful pathogens, is bound by the same rules. This holding period could place an unnecessary financial burden on an agricultural operation by way of extra storage buildings and extra handling of the material. We have included a picture of the bioreactor.

The next piece of technology is biological remediation, where we can use naturally occurring class I bacteria to effectively treat lagoons, feed areas etc. These bacteria can be sprayed directly in a liquid form or introduced in a tablet form to the area needing treatment. The biological activity that takes place is the customized bacteria consume the nutrients and the only by-product is carbon dioxide and water. We have treated large municipal sewage lagoons in this manner. We market products developed by Custom Biologicals Inc from Florida. Their expertise has been developed over decades in offering natural and environmentally safe solutions to a wide range of issues. Some of these same bacteria are utilized in the aforementioned bioreactor. Other uses of the bacteria include odour control, hydrocarbon spill remediation, grease traps etc. I forgot to bring the tablet.

Thirdly, we would like to bring to the committee's attention that there are filtering devices which can aid the agricultural sector by filtering out particulate matter from liquids. We represent the Dynamic Filter, a patented device developed in the United States which provides absolute filtration. The term "absolute" means that the filter media, for example three microns, have been laboratory tested and that no particulate matter greater than three microns in size can pass through the filter. Filter media rated at this level are even capable of effectively screening out harmful giardia and cryptosporidium. On the other hand, a typical municipal water system using sand filtration is only effective to approximately 28 microns. This demonstrates the level of filtration which is available.

We have conducted tests using the Dynamic Filter on hog manure straight from the lagoon with outstanding results. The use of such a device could potentially have a great impact on operations such as hog farms by reducing the organic material component that is suspended within the hog manure. In this way, both the remaining liquid and the separated solids could each be treated more effectively. We've got a picture for you to look at.

Lastly, there are other dewatering devices. We work in conjunction with a major agricultural supplier who offers systems that can effectively remove up to 70% of the liquids within manure. This mechanical device is to be installed prior to our bioreactor on an 1,800-head dairy farm. The ability to easily dewater manure is especially important on these dairy farms due to the large volumes of water that are used in the cleaning of the barns. For composting, the material should be around 60% moisture content so that additional dry bulk is not required.



To summarize, there are many currently available technologies to assist either the small farmer or the intensive agricultural operation. As a supplier of some of these technologies, it is our desire to make it easier to comply with these new guidelines. As they are set in place, to close the loop on managing the nutrients that are generated on the farm, we would request that equal consideration be given to the implementation of new technologies.

Every farmer is already facing a number of challenges in implementing his nutrient management plan. Currently there are various provincial authorities, including the Ministry of Agriculture, the Ministry of the Environment and the Ministry of Natural Resources, that have input and/or jurisdiction.

If, as we have discovered, the farmer is unable to get clear and concise answers to his questions, then the process is flawed. Farming in the 21st century is and will be vastly different than it has ever been and the transitions can be made easier with proper attention to the existing governing acts.

Thank you for allowing us this time. We could answer some questions.

**The Chair:** We've got about a minute and a half for each party for any comments or questions.

**Mr Steve Peters (Elgin-Middlesex-London):** I have a couple of comments to make. If one were to use any one of these processes and create a centralized facility, would that then be a waste disposal site?

Secondly, just so that I can get this on the record, has anybody done any independent testing of these processes that you've put in front of us today?

**Mr Gagnon:** The concentrated sites that you're referring to, or centralized sites, have been discussed with the Ministry of the Environment. We've looked at these options and as soon as the farmer has to haul his waste product, he'll be falling under a C of A. Now he either has to apply it and do it himself, or then it's going to fall into a contractor's hands, adding costs to his operation.

What we've been struggling with now is to manufacture a mobile unit where we can specifically go into each farm once or twice or three times a year and compost and solve the problems at hand. We fall into another category there of cross-contamination. If the farmers are all going to haul from their individual farms to one central site, how do you address cross-contamination? So that's an area that we want to try and get clarification on where the ruling's going to go. Because even on Manitoulin Island, the small farmers that we're dealing with right now, that's their biggest concern. If there's a central site where a composter can be installed and everybody could haul there, how do you avoid cross-contamination if somebody brought in a virus of some sort and it got back to his farm? They're really worried about that aspect of it.

**Mr Maskell:** The University of Guelph and OMAFRA have done a number of tests with composting and it does successfully kill all the pathogens etc. So if that's part of your question—

**Mr Carl DeFaria (Mississauga East):** From your presentation, I can see two problems that you see with the legislation. One of them you mentioned is the importing of hay or straw from one farm to the other needing a licence, that's one of the problems, and the other problem is the requirement of storage of compost material once it has been processed?

**Mr Maskell:** Correct.

**Mr DeFaria:** Are those the only two problems that you see with the legislation?

**Mr Gagnon:** That's what we see being at hand firstly. In the typical research at OMAFRA and Guelph, and all the universities that have dealt with the composting equipment that's on the market today, that's a large concern, because under the Ministry of the Environment ruling that 21-day standing criterion is there. It is there for the specific purpose of ensuring that all pathogens have been neutralized and will not reactivate once they get out into the environment.

What we're trying to say is, with our equipment, it's been proven to various universities in the United States for the past five years that this technology goes beyond that, so that 21 days would just be an added cost to the local farmer. It should be looked at and reviewed before any rules and regulations are implemented as such.

**The Chair:** I wish to thank you, Mr Maskell and Mr Gagnon. We appreciate your coming forward. I had a chance to visit Gore Bay a couple of times this summer, so I appreciate this presentation from Gagnon Renewable Resources. Thanks for coming on board.

0930

#### NORTHEASTERN ONTARIO GOAT MILK PRODUCERS GROUP

**The Chair:** I now wish to call forward our next delegation: Northeastern Ontario Goat Milk Producers Group. Good morning. We would ask if you could give us your name. We have 15 minutes.

**Ms Michèle LaFramboise:** Bonjour. My name is Michèle Laferrière LaFramboise. I'm proud to represent the Northeastern Ontario Goat Milk Producers association. I have no notes, I have no fancy charts. I'm leaving that to the scientists and the specialists. I am here to represent a group of 20 farmers who are trying very hard to get a new industry going for northeastern Ontario. We have 20 families who have invested half a million dollars each, and although we thoroughly support all these laws and acts which endeavour to keep our earth safe, we are also caught in a very financial crunch trying to meet the criteria established by these laws.

We are told, for example, when we get our building permits and do our set-ups, that we need type 4 septic systems to accommodate the needs of our dairies because there are no considerations in the act to specify different types of dairies. We are told by the specialists—Mr Bob Stone, an engineer with OMAFRA, has been working closely with us—that we simply can continue with the systems presented because we are small and we do not



raise small cows; we raise dairy goats, which are very different. I'm here this morning to ask that when the fine details are tuned into the act consideration be given to for the different kinds of dairies. Sure, we all raise ruminants and we all have our milk houses and milk parlours, but from there the differences change drastically.

Our animals produce dry manure and, being in north-eastern Ontario—our boundaries are north of Sundridge, west of Quebec and east of the Soo—we are on mostly clay soil, so that filtration is accommodated naturally without great expense to the little farmer. However, that being the case, the way the nutrient management system is being set up now, it is forgotten that we have smaller animals. When it comes to our grey water, our manure storage, both liquid and earth, we are being grouped with animals that have far greater results than what we ever produce. When it comes to volume for solids, a dairy cow, which can go up to 1,400 pounds, is being used as a guideline, whereas our goats at best might reach 150 pounds. Even if you try to compare and go 13 to 1 for a ratio, a 10 to 1 ratio is only comfortable when you're dealing with feed, not with output. There the values and the numbers change more to 15 to 1. So we are asking that respectful consideration be given to these differences so that we are not lost in the large picture.

In the nutrient management plant, minimum distance separation—which is the setbacks to the roads and the houses—is being given per livestock unit. They are considering our little milk goats as four animals per animal unit, yet this same law allows for five sows per animal unit. Their output is far greater, far wetter, and they are much larger than ours.

There is a lot of lack of information on goats in Canada in general and in Ontario in particular. The large farms with herds of 500 or more are situated in Alberta. Throughout the world, seven times more goat meat is consumed than beef. It is the last domestic animal without cancer. Goat milk has health benefits to the young population—children being born with all kinds of lactose intolerance and other allergies—and the seniors, who increasingly suffer from cases of high blood pressure and high cholesterol, all of which are easily remedied by changing to goat milk.

I conclude by saying, continue in your fine work and endeavours. Yes, we applaud and support you thoroughly. But please give consideration to smaller livestock and the smaller farmers of Ontario. I'd be happy to answer any questions.

**The Chair:** Thank you for the presentation. With respect to questions, we've got about four minutes for each party, if needed.

**Mrs Tina R. Molinari (Thornhill):** Thank you very much for your presentation this morning. I don't have a question. Your presentation was very comprehensive in highlighting some of the unique issues that you experience from smaller livestock than what we've heard. I just want to give you some assurances that when the regulations are being developed, a lot of the issues and concerns that have been raised through these consultations

will be taken into consideration. The other presentation we heard that was similar to yours was the sheep producers. They certainly highlighted some of the similar issues that you highlighted, being a livestock that's smaller than cows, and a number of other issues that were raised. You've set some clear examples of some indications that would allow us to look at it and identify the uniqueness of the various farms. Certainly I want to give you the assurance that it will be taken into consideration in the development of the regulations.

The regulations will also go through a consultation process before they are actually enacted. Once the regulations are written, they will be—I don't know that the minister has yet made a decision as to how extensive the consultations are going to be; one presenter during this process suggested that the consultations not be as wide-ranging as these consultations are, but more specific to various groups that would be called in and asked for advice on what it should be. Those are some of the ideas.

We've also heard through this process how to implement the regulations and what kind of input those should have. Certainly if there's one thing we've heard, it is that there is uniqueness there and that one size doesn't fit all. I appreciate your coming this morning and highlighting your specific needs. I want to assure you once again that they will be taken into consideration.

**Mr Peters:** You're representing the northeastern Ontario goat producers. How extensive are your col-leagues throughout the rest of the province?

**Ms LaFramboise:** We are very strong. They have been very disseminated. They have been known as the cottage industry. We are finally fine-tuning this into modern farming with professionals at the helm. We are working together with the other associations, be they the goat breeders association or the milk producers association for goats. We are but phase 1 of a project from Fednor. Next year, for example, we are adding another 20 farms and we are proceeding in that direction that fast.

**Mr Peters:** In a 365-day year, how much of that year are the goats inside and how much outside?

**Ms LaFramboise:** The law in Europe asks that the dairy goats be outside one hour a day. There are no such laws in Canada. But we must really control anything that goes in because we are paid for what goes out. At this time, most dairy goats that are on the milking cycle, which is 10 months a year, are kept indoors exclusively.

**Mr Peters:** It hasn't been set yet, but would you be capable of having 365 days' storage for manure on your farm?

**Ms LaFramboise:** Yes. It is through a cement pad with the walls, proper depth lagoons, runoffs and covers. We are also exploring alternatives which are cheaper, such as the vegetable feeder strips.

**Mr Peters:** Could you elaborate please?

**Ms LaFramboise:** I don't have the details. I'm not a scientist but apparently, because of the high quality of our manure and the low liquid density, this is ideal for creating organic gardens.



**The Chair:** I appreciate your coming forward. Up until recently I owned a few goats and I think every politician should own a few goats in their lifetime just to learn how to deal with goats. Sheep are bad enough.

**Ms LaFramboise:** We have over 200 very healthy specimens. Any time you wish to play, you're welcome.

**The Chair:** Three was enough for me.

0940

#### LYSTEK INTERNATIONAL

**The Chair:** From our agenda, I'd like to ask Lystek International to come forward, please. Good morning, sir. We have 15 minutes; if you wish to give us your name and proceed.

**Mr Cam Gray:** I'm Cam Gray. I'm very happy to have the opportunity of presenting Lystek International to you folks. A little bit of background on myself: I'm a professional engineer and been in the waste water treatment industry for over 30 years. I have a fair knowledge of most processes applied both in animal waste as well as municipal waste although my background is more aligned to the municipal field.

It is interesting that over 20 years ago a company I owned and operated came to the conclusion that the incineration and landfilling of material that was organic in nature was probably not the right way to solve a very difficult problem in the waste water treatment industry. We acquired some technology from Sweden to take the organic-rich waste from municipal sludges and turn it into a pellet-sized fertilizer. In fact, we commenced building a plant in Guelph. I heard a previous person talk about the Guelph situation. That plant never got finished in quite the form it was intended to, but it is operating as a composting operation. I have a long history and a long interest in this matter of dealing with sludges, not just from municipalities but from farm waste as well.

I was recently approached by Lystek International, in the last six or seven months, to provide a consulting service to the company. It is really a fascinating opportunity for Canada, for North America and even for territories and jurisdictions beyond. Lystek was founded by Dr Owen Ward from the University of Waterloo. He has had two previous situations where he has developed technology at the University of Waterloo and has successfully commercialized the technology. He regards this as by far his most significant contribution to date. He aligned himself with a Mr Frank Hovey who was almost 10 years president of BF Goodrich. I'm pointing this out to you, that the company has a very strong technical background and also a very strong management background.

The technology has been proved at the laboratory level. It has been presented to many people in the province of Ontario with whom you'd be well familiar, including the Ontario Clean Water Agency and many of the consulting engineering firms, including CH2M Hill Canada Ltd. No one has looked at this technology who isn't extremely impressed with it seeing it as a real

opportunity of contributing to the solution of this significant challenge that lies ahead for all.

I've given out a little flow schematic that shows what we are up to, but basically the technology is to create a class A biosolid for land application as processes 1 and 2. I can go into detail if you'd like, but basically the first process is the ability to create class A biosolids at about approximately 15% to 20% dry solids, which is normally not pumpable in this industry. What this company is able to do is create those biosolids at a very low viscosity, which significantly reduces the transportation costs and really makes the application much less costly.

The second class A biosolid that they produce is a dry solid, and that is accomplished principally through a drying technology. It is related to the refrigeration cycle that's very cost effective. I think when you look at this whole topic, first, everybody in the industry is looking for direction in which way the regulators are going to move as far as class B and class A solids. I think most people feel it is going to be a significant swing to class A. Whether that's right or wrong is not, I think, for this forum to debate. Regardless, if you're able to generate a class A solid as defined, that's the first step. The second step is, can you do it economically?

Generally, the number in the province of Ontario—I recently visited the Ashbridges Bay project, which is a very large drying facility where they create a pellet that is class A biosolids for the city of Toronto for approximately half of their waste. I've also visited a site in Sarnia which has a lime stabilization process. Generally speaking, in North America you're looking at somewhere in the neighbourhood of \$300 to \$350 a dry tonne to produce biosolids, which is a pretty staggering amount of money. The Lystek technology will make significant improvements in those cost numbers.

To the extreme right of the flow schematic I've handed out is taking the dry solids from the processed B and actually running them through a gasification process and making methane, and possibly methanol, and electricity. That's really stage 2 of the company's development project. Right now we are working on the liquid side and the dry side, both class A biosolids. The next step for the company is to build a full-scale demonstration plant. That's normally what has to be done when technology is developed. We are in the process of raising approximately \$1.2 million to do that. We have a site chosen and we hope to be able to at least start that plant up in the next six to nine months.

That's the general presentation. The important things I've stated are that a number of so-called authorities in this industry have reviewed the technology in detail. There's a very high level of interest, principally because it looks as if this technology—we know the technology can produce biosolids for less money than any other way that's known today. There are many ways of creating biosolids.

That's really the end of my presentation unless there are some questions or unless you'd like me to get into some of the technical aspects of how we do this.



**The Chair:** Thank you, Mr Gray. I would go to Mr Peters for any comments or questions.

**Mr Peters:** I don't want to ask you a question specifically about your process, but this is our ninth stop and we've had a number of presentations on different technologies. We've had two today. I'm not a scientist. What would you advise me as a politician that we should do? I agree; I think we need to look at new technologies. What would you advise me as a politician that we could do, and how could we be most proactive as politicians to ensure that we look at these technologies and we find out for our own satisfaction and the satisfaction of the general public from an independent standpoint that these are safe technologies? What do you advise that we do to find out?

I see we've got some real problems. We've heard a lot of concern expressed all around about biosolids, a lot of concern—we know where septage is going. It is not going to be spread on the fields any more. We've had a lot of concern expressed—we've had mixed opinions—on pulp and paper mill sludge.

If you were me, what would you suggest I do?

**Mr Gray:** There are a tremendous number of very capable people working on this project. There are a lot of very talented companies and individuals. The fear of people like myself—I've been in this business for a long time—is that the pendulum is going to swing too far and that the problems we had at Walkerton and other places are going to dictate class A solids, which are far more expensive, obviously, than the B, which traditionally has been land-applied, that it is going to dictate or going to swing the way.

I'm sort of defeating my own case here a little bit, but I'm an environmentalist first and a businessman second, probably. There's a concern that the pendulum is going to swing too far, which is the right thing to happen. You have to err on the side of conservatism when there are health risks involved with the people of our province and our country.

0950

Everybody is waiting for the National Academy of Sciences in the United States, which the EPA has asked to opine on this topic. As I understand it, that's going to affect Canadians. That decision is supposed to be out by the middle of next year. I'm sure you know this.

I didn't really answer your question very well, but I think that probably—

**Mr Peters:** Is it money for us to invest in research?

**Mr Gray:** That's an important thing. I've actually just done a review of the literature on the companies that claim to have the ability to create class A biosolids. There are at least six or seven renditions or variations to traditionally used anaerobic processes in municipal waste water. There are probably at least another 10 or 12 that I've looked at that are private-sector-developed. Certainly there's lots of room for development. We are looking for money. We could very quickly go to the United States of America and raise the money we need to build our demonstration plant. Suddenly the ownership of

that company no longer is vested in Ontario or Canada; it becomes an American company. We don't want to do that. Quite frankly, I'm quite sure we are not going to have to do that. But there's certainly a need to do research and to clearly understand the strengths and weaknesses of the processes that are available today.

**The Chair:** Any further questions? OK. Mr Gray, thank you very much for coming forward and presenting on behalf of Lystek International.

#### KLAUS WAND

**The Chair:** We are a little ahead of schedule. Is the Temiskaming Federation of Agriculture ready to go? If not, I'll go to Klaus Wand, if you could come forward, please. Have a seat, sir. The microphone will come on automatically. As an individual, you have 10 minutes for your presentation.

**Mr Klaus Wand:** Good morning, Mr Chairman, committee members. My name is Klaus Wand. I'm from Powassan, 30 kilometres south of North Bay. With my wife, I operate a beef operation, cow-calf specifically.

The Walkerton tragedy surely has increased public awareness of environmental issues. It has grown to the extent that some local governments are now trying to solve these issues in questionable ways which are of great concern to the farming community.

Nutrient management is a natural for farmers. Once or twice a year, most of them sit down especially to plan for the next growing season, to assess the need for the nutrients required to grow a good crop. Aiding them in their decisions are soil tests, GPS mapping and results of the last harvest, influenced by various factors like weather etc. The calculations of what type of fertilizer to use, organic or commercial, are made carefully because it is a major expense and money saving is critical.

Farming groups were and are aware of their responsibility to the environment and have therefore no general problem with Bill 81. They have worked hard to be proactive by introducing the environmental farm plan, by promoting best management practices like buffer strips, and by working closely with different agencies on various initiatives.

To make Bill 81 meaningful, a number of concerns should be addressed.

Farmers should not be singled out. The act should apply to any nutrient user: farmer, golf course owner, provincial or municipal government, and any other land-owner. Just look at the super green lawns of some proud property owners. The Nutrient Management Act must supersede any municipal bylaw so that everybody is treated the same way.

Enforcement of the law should also be carried out by provincial agencies, and it should be OMAFRA, where the expertise lies. Only in that way is a uniform application of the act possible, and no room is left for different interpretations.

Another point is the access to waterways. It is often not practical, possible or feasible to completely fence off

watercourses. Just think of flooding or ice breaking up in springtime. Valuable land could be lost for grazing and used for other not-so-desirable activities. There are ways to minimize the impact cattle could have on waterways.

Much attention should be given to terminology used in the act. The example here is "intensive." It's different, what I think and what other people think, if you talk about intensive farming. I just farm intensively, and other people think right away of factory farming. What is factory farming?

Education for all is very important, especially for the small users of nutrients. Their thinking often is if a little bit helps, a lot will help for sure. Just watch the sales pitches at garden product outlets at the present time to get rid of unsold fertilizer. Most of it would be against best farming practices.

To deal with complaints and unnecessary confrontation, local nutrient management advisory committees with farmer representation, who have the best knowledge of their area, would be very important.

Many farmers fear that the new act will hit them like a wrecking ball. They are asking what the time frame of the full introduction of the act will be and where the money will come from to fully comply. Will the new law make it harder for them to compete with their provincial neighbours or other jurisdictions? Here it is important that the provincial government clearly spell out what—and I put this in brackets—"retroactive" financial assistance and initiatives will be given to meet the new standards.

Since the act has the common good of all Ontarians in mind, the general public should pay its fair share. Who carries the burden of the administration, the issue of licences and the necessary audits? Another downloading?

The new act gives sweeping powers for inspections and entering premises without warrants. How will land-owners be protected against possible abuse and, when dealing with livestock, against breach of biosecurity and the spread of contagious diseases, like hoof-and-mouth disease? There are still a lot of other questions to be answered and much work has to be done to address the concerns of the affected groups.

Ways should be found to effectively minimize existing environmental problems before trying to eliminate them completely, because in the past, things were done for good reasons. Here I'm thinking of building barns close to waterways.

Farmers have indicated if the burden of the new law becomes too great, they will just quit. By doing so, they would create other problems for their rural communities and the province.

**The Chair:** Thank you very much, sir. That gives us about a minute each—10 minutes goes pretty fast—for each party. PC Party, any comments?

**Mrs Molinari:** Thank you very much for your presentation. You have highlighted a number of issues that are, in fact, consistent with some of the presentations we've been hearing. One of the ones I want to get your opinion on to elaborate a little further is your comment that the provincial legislation should supersede municipal

bylaws. We have heard that from a number of presentations, but then we've also heard that there are specific municipalities that have different types of needs than other municipalities. How would you see it working or what would you need to see in the regulations to be able to accommodate some of the uniqueness in some of the municipalities so that we don't have something that's an imposition on one municipality that may work well for another?

**Mr Wand:** I mentioned local nutrient management advisory committees. They would have the best grasp of the problems in their area or what could be done in their area.

**Mrs Molinari:** Who do you see as members of this committee? Who would it consist of?

**Mr Wand:** I guess the municipalities, the farmers, whoever has some interest in livestock operations and farmers in the cash crop area, which is different when it's mainly a cash crop. Those should be represented on the advisory council.

**Mr Peters:** I'd like you to comment on two points. One, there's some talk within the regulations that there may be a requirement that one may have to own a certain percentage of land to be able to spread nutrients upon it. The second is that there may be calendar dates established when spreading can occur. It's a lot different from where I live in St Thomas, south of London, to where we are right here in North Bay. So comment on calendar dates and comment on land ownership requirements.

1000

**Mr Wand:** Land ownership—there's something to it. If you don't own the land, you can't get rid of the waste you will get. There are nutrients left in the animal waste, and if you don't have the acreage to spread it, that's a problem. You should have a certain acreage for the production you have.

The timing, to set calendar dates, I think then you go back to Russian ways, in the communist countries. They had everything planned, and the plan never worked. If it rains the day when I can spread manure, I don't do it. So would I have to ask for permission, then, on a certain date, or if I'm past that date, to spread my manure? That's ridiculous, to set dates. The farmer is independent; he should be able to operate independently within the guidelines, whatever they are.

**The Chair:** Thank you, Mr Wand. We appreciate you coming forward to our standing committee.

#### TEMISKAMING FEDERATION OF AGRICULTURE

#### COCHRANE FEDERATION OF AGRICULTURE

**The Chair:** I now wish to call forward the Temiskaming Federation of Agriculture. Good morning. You can sit at any microphone. They come on automatically. You have 15 minutes. If you can give us your name for the Hansard recording service.



**Ms Fran Nychuk:** I come to you from Temiskaming, representing both the Temiskaming Federation of Agriculture and the Cochrane Federation of Agriculture. My name is Fran Nychuk.

Farmers live by the land. Whether we deal in animal husbandry, cash crops, horticulture, fruits or trees, our livelihood is lost without clean, environmentally sound soil and water. Farmers are and always have been stewards of the land. We nurture the lands that yield the products we raise to feed our families of the world.

The agricultural industry requires legislation that sets down firm regulations which will ensure the use of manure and fertilizer will be standardized throughout the province. Governing bodies must recognize that in the plan to reduce the possibility of future pollution of our lands and waters, the cost to meet the proposed new standards will require capital grant monies to enable the farmers' efficient and effective compliance.

Canada—Ontario—is known for its top-quality, safest, most abundant and cheapest food. You and I share the rewards of this statement. We, too, are charged with ensuring the maintenance of this quality. Safe, secure surface and groundwater supplies are a necessity, a value for which we must all share the cost.

Water is the lifeline of our lands, our livestock, our vegetation, our lives—yours and mine. The risk management tool I see this legislation offering is one of the most visionary that I have seen to date. The Temiskaming federation and the Cochrane federation support the Ontario federation's approach to nutrient management planning.

(1) Legislation is required to set province-wide standards that will regulate nutrient management.

(2) The assurance of a science-based, site-specific enforcement of this legislation by OMAFRA and the Ministry of the Environment agriculturally and environmentally prepared and knowledgeable people.

(3) Capital grant formulas must be established to assist the agri-community in its move to further ensure the safety of our ground and surface waters with new legislation compliance.

Agriculture supports the community it grows in. The community supports the stable and valuable industry of agriculture. The enactment of this legislation benefits our whole communities. Planning for and providing for the environmental security of our communities should be shared. This is a benefit to the whole. We applaud our government's approach through Bill 81. Given the input from agriculture that you have had to date and the advice that comes to you from the federations, we see that you will give it life and that you will assist in the financing of its operationalization. My presentation this morning is rather short. I thank you for your attention and for the opportunity to be here, and I will attempt to respond to any questions you might have.

**The Chair:** Thank you very much, Ms Nychuk.

**Mr Peters:** Just briefly, could you paint us a little picture of what agriculture is within Temiskaming-Cochrane district?

**Ms Nychuk:** Agriculture in Temiskaming is the primary industry. It affords value of lifestyle but also economic value to Temiskaming that has been the most stable in the 1900s. It is a broad-based industry. Dairy is probably the forerunner in Temiskaming of the agricultural sector, noted province-wide. In fact, I have a neighbour who has met the top standards in the dairy industry for three consecutive years. We have a very large beef industry, both feedstock and commercial cow-calf industry. We have a significant cash crop industry. Our seed grains are exported, not only throughout Canada but throughout the world. We also have a significant pork industry. We have sheep. We have vegetables, horticulture. Fruit is not a biggie in Temiskaming. It is very significant economically.

**Mr Peters:** For your cattle, your dairy and your hog farmers, would those individuals, if we said to them that they had to have 365 days' storage for manure on their farms, are they going to be in a position to do that or is this going to be a substantial financial burden to them to meet those standards?

**Ms Nychuk:** As in most industries, there are those who will be dramatically impacted on a negative perspective. There are those who might be able to handle that. But, yes, the costs will be overbearing to a number of farmers in complying with that. That is why we are looking at some financial assistance. We see this as an impact to the entire community, and given our community share, I don't think that's a big thing to ask. I think communities will be prepared to.

1010

**Mr Peters:** What's your opinion of having non-farm, rural residents on the environmental response teams, the advisory committees?

**Ms Nychuk:** I believe in participation by all sectors. That is important. The agricultural industry has to definitely be very present, but I do believe in hearing the voice of our colleagues and our compatriots, community members.

**Mr DeFaria:** Ms Nychuk, the farming and rural communities are well represented in our caucus. We have MPPs who often fight for assistance and programs for the farming and rural communities. One of them is our Chair, Toby Barrett. We have Dr Doug Galt, Gary Stewart and we have an MPP called Mike Harris who represents a rural—

**Mr Peters:** Is the local member coming today?

**Mr DeFaria:** The farming and rural community has spokespeople who speak highly about the programs that are needed for the farming community. I represent a city riding in Mississauga, which is very close to Toronto. You talked about financial assistance, a capital grants formula to assist in compliance with this act. In the city this act will also affect urban sludge and city taxpayers will have to also incur this cost through their tax system. Would you agree that this capital grants formula that you suggest as financial assistance, whether it is by tax credit or some sort of assistance, should apply all over to people



who are affected by this act or just to the farming community?

**Ms Nychuk:** Of course, coming at this point from the agricultural sector, I believe that our food is extremely important to us as is our water. Without both, life is non-existent. I don't know if you're asking me whether I would consider an equal share in that cost or not. If that is what you're suggesting, I might have some slight difficulty with that. That's not to say that perhaps our urban brethren shouldn't be supported in the need to handle their waste or their sludge as well. All that I'm saying is that it should not be at the demise of the agricultural sector. Having been an urbanite and in fact lived in your community—

**Mr DeFaria:** It seems that a lot of people who appeared before us lived in Mississauga or are planning to move to Mississauga. It is a great city.

**Ms Nychuk:** I'm not planning to go back. I love it, but I'm not planning to go back there to live. As an urbanite, my food and the safety of the food that I consumed was extremely important to me, most particularly when I began my family. That is inherent to all of us. The need to maintain the quality and the safety in our food sector is extremely important. Nutrient management is a big part of that safety.

**Mr DeFaria:** The point I wanted to make is that you understand that this act affects not just the farming community but also the people in the city.

**Ms Nychuk:** I definitely do.

**The Chair:** Thank you, Ms Nychuk, appreciate the Temiskaming federation coming before the standing committee.

#### ONTARIO FEDERATION OF AGRICULTURE, NORTHEAST REGION

**The Chair:** Our next delegation is the Ontario Federation of Agriculture, Northeast Region. Good morning, sir. If we could ask for your name. We have 15 minutes to proceed.

**Mr Frank Giguere:** Thank you, Mr Chairman. I represent the areas of Valley East and Nipissing, as well as the whole of the Muskokas. My name is Frank Giguere. As you said, I'm with the Ontario Federation of Agriculture, and am in favour of nutrient management, although I realize that for some it's going to be an added financial burden, to an extent.

Most of the farmers, though, have or are in the process of doing what is called the environmental farm plan program. I don't know if you're familiar with it, but it was alluded to previously, that you need to either rent land or own land and stuff like that. With the environmental farm plan, to an extent you're dictated how many units per acre, regardless of the size. Whether it be goats or sheep or 1,600-pound cows, you have a guideline to follow. We've taken all those precautions through the years—probably it's 10 or 12 years since I went through that process—and try to respect it to the best of our

abilities, although weather is not always working in our favour.

One alluded a while ago to the year's containing of nutrients, or manure storage, for example. If you have two wet years in a row, you don't need to be a lawyer from Philadelphia to think that the inevitable is going to happen, that at some point in time some of that will have to be spread, and not in favourable conditions. But it's not done willingly; it never will be, because a factor that I think has a lot to do with it is education and communication. If, for some given reason, we have the buffer zones to respect, whether it be in applying the commercial fertilizer or the nutrients, as we know them, or pesticides, we do that very religiously, because we don't want to poison ourselves, to start with, never mind poisoning the others. We all have families to tend to.

Having said that—because I speak for everybody as a whole that I represent, and they're in different walks of farming—I know that there's going to be some monies or some financial assistance asked for, for the different aspects of respecting Bill 81. But I look forward to it, generally speaking, because then it involves everybody. That means that the person in town or in the big cities who has to take care of their lawn, if they want it to look nice, has to abide by it the same way, or worse sometimes, in the application of pesticides to control those yellow flowers that were intended to be weeds, but throughout the years we've called them exactly that. So whether you're farming or you're an urbanite, it doesn't change all that much.

We all at times have to go to that little closet of ours and it doesn't smell so good. So I don't know on which is different in magnitude. At some point in time what we eat, downstream it doesn't smell as good. But we all have to recognize that if we want to deal with this bill, which I think makes a lot of sense and does a lot for everybody—it takes care of everybody and I think it's justice that's being put in process at the provincial level.

**1020**

Having said that, we are asked by people in general to be stewards of the land. This we don't mind at all. We have to because I, like so many others, could say, "I own the land." Well sure, try and pay the taxes and everything that comes with it. But I know full well that I only borrowed it from my predecessors to hand it to future generations in as good a shape, if not better, than when I first took it.

So I think it's with this in mind that I come forward and endorse Bill 81. I think through education and communication, we shouldn't have any problems with keeping on doing what we are doing normally and striving with it.

**The Vice-Chair (Mr Carl DeFaria):** Are there any questions from the committee? We have approximately six minutes, three minutes for each caucus.

**Mrs Molinari:** Just briefly; I don't think I'll take up the time. First of all, thank you very much for your presentation. We've heard quite a few presentations from the agricultural communities, and the OFA, the prov-



incial association, has also made a presentation in Toronto. Certainly a lot of the views that come from such a respected organization will be taken into consideration.

One of the themes that seems to be consistent with the presentations, of course, is the whole issue around financial assistance. You've put it in different wording, "for respect of Bill 81;" others have been saying "to comply with Bill 81."

One presentation we heard a few days ago was from an individual who was an environmentalist who's concerned about the environment. His comments were something to the effect that you shouldn't pay somebody to abide by the law. It was quite an extreme kind of presentation throughout the whole, but of course that's one opinion, and there are several opinions.

The other comment you made was with respect to education and that there has to be some education of those in the farm community to be up to speed on what it is the legislation requires, with modern technology and all that. One presentation—and I don't have all of the copies in front of me to quote from it directly—referred to a clause in our bill that talked about the need for education and referred to it as "far-reaching" and that it was unreasonable to expect the farm industry to come on line with the education that we were recommending or that's presently in the bill—which, as you may know, is very open, precisely so that the regulations to be put in place can be in such a way that they accommodate all of the community rather than having something more stringent in the legislation.

If you could just take a few moments to talk about what type of education you feel would be needed in order to have the farmers be up to speed with what the requirements are with respect to the bill and fulfilling them once the regulations come out.

**Mr Giguere:** Are you alluding to education of farmers versus the urbanites? Is that what you are alluding to?

**Mrs Molinari:** In this respect, yes, because I'm presuming you're representing the farming community—

**Mr Giguere:** Yes, that's right.

**Mrs Molinari:** —and so with your expertise, that's what I'm looking for you to respond to.

**Mr Giguere:** I will respond in those terms. Agriculture is not something where you can sell the finished products at whatever price you feel like, because we are being dictated by different boards and organizations to sell at certain market prices, unlike some others. One could argue because we have to buy equipment that mostly comes from the States—they are never justified to give us the ways they came to ask us the final pricing. In agriculture, we ask what we can ask, not what the market will bear. This is why a lot of the time you're going to hear that we need assistance. If we were to have the same leverage as the others and go straight out and ask as much as the market will bear, then we would never ask for any kind of leverage or financial assistance, because if you have such a pricing that's handed to you, you would hand it down to somebody else. But the buck stops right there. That's not known to a lot of people. This is

why a lot of times they will say, "If he can afford a combine of \$150,000, sure as heck he's got it made." But what they don't know in the majority of times is that you're struggling to meet those payments and sometimes you lose it. You're gambling all the time.

**Mrs Molinari:** What about with respect to the whole issue of education? You touched on the need for education. What did you mean by that?

**Mr Giguere:** Exactly what I said, that the people, the consumer in general—and it's a normal thing if you're not involved. It's just like the health system, if I may deviate a little bit: if you're not sick and haven't been sick in a good while, you don't know what flaws are in the system, really. But the questionnaires that were passed around, and this I agree with, may be something. I don't know. I don't have the answer; I'm just suggesting again. But if that was good for the health system and those who are afflicted with different kinds of diseases that are around and you're processed through the health system as it stands now, then being exactly in that process, you know what ails it.

**Mrs Molinari:** So your comments on education were specifically educating the public at large as to the challenges that the farm community is facing.

**Mr Giguere:** That's right.

**Mrs Molinari:** That's what you meant by education.

**Mr Giguere:** Yes.

**Mrs Molinari:** All right. I'm clear now.

**Mr Peters:** I have a couple of questions. One is your proximity to the Quebec border. Are there any instances where farmers may be spreading their nutrients on lands in Quebec or, vice versa, where a Quebec farmer may have an arrangement to spread on lands in Ontario?

**Mr Giguere:** I don't know. I don't live that close. I'm an hour's drive from the Quebec border. It would be up to those people who are closer.

**Mr Peters:** Could that be happening?

**Mr Giguere:** It could be a possibility. I'm just doubting, the same as you are. Nobody ever told me.

**Mr Peters:** Secondly, dealing with pulp and paper sludge, are you aware of any pulp and paper sludge being spread on agricultural lands in your region and have any of your farmers expressed any views, either positively or negatively, to that practice?

**Mr Giguere:** Not to my knowledge, no.

**Mr Peters:** The issue of storage for farmers in your region, is it going to be a burden? Would most farmers be in the position already that they would have 365 days' storage available on their farms, or is this one of the areas that may require financial assistance? If that was the decision, is this one of the areas where farmers are going to need some assistance?

**Mr Giguere:** It's possible. I don't have the numbers or a survey made as to who would need what, because that's relatively new. We've been talking about it. When the time comes we will know. Surely there's going to be some needed assistance but to what extent I don't know.

**Mr Peters:** My last question is—through the regulations and the legislation there will be advisory com-



mittees created—do you feel it is appropriate to have individuals with a non-agricultural background but living in the rural area as members of the committee?

**Mr Giguere:** Coming back to education, I don't have a problem with that so long as they're open-minded. Sometimes it's only to the betterment of any organization. That's the way I see it.

**The Vice-Chair:** Thank you, Mr Giguere, for your presentation.

1030

#### BLUE SKY ECONOMIC PARTNERSHIP, AGRICULTURE SECTOR

**The Vice-Chair:** The next presenters are the Blue Sky Economic Partnership, agriculture sector, if you would please come forward. You have approximately 10 minutes for the presentation, and we usually ask that you leave the last five minutes for questioning. If you could just state your name for the record.

**Ms Sandra Smyth:** My name is Sandra Smyth and I'm co-chair of the Blue Sky agriculture sector in this area. I want to thank you, ladies and gentlemen, for coming north and hearing some of our northern points of view to the proposed bill.

Just to give you a quick overview, the Blue Sky agriculture sector is one of several sectors that is monitored by the Blue Sky Economic Partnership. Blue Sky used to be known as the Near North. We have taken on what we feel is a much more positive name for the area.

I want to take this opportunity to remind the panel that my colleague Frank spoke about education. I think a lot of education is needed for our farmers. How that's delivered, I'm not entirely sure. There has been about a 35% take-up, I understand, on the environmental farm plan. I think that has to be pushed a little further because there are elements of the nutrient management plan in that.

The other thing, I remind our panel, is that education is great if you've got people who are fully functionally literate. Across the province it's known there's about 20% functional illiteracy, and in the rural areas probably more so, which may explain some of the non-take-up of some of the programs that have been given out for agriculture.

Something that's interesting in the Blue Sky region is that we have not suffered a loss of farms in recent years. One of the tools the panel can use—and ours is not quite ready yet—we have an economic impact study for the Blue Sky region which will be available fairly shortly. This is a draft version; there are still some numbers that are incorrect. I think it will help to give an idea of what the actual financial resources are of the farmers in Blue Sky, and there are economic impact studies done through the southern parts of Ontario as well.

As a point of comparison, the net revenue per farm in Blue Sky region in 1996 was \$2,510. That's not a lot to spend to meet the requirements of a new bill or the regulations attached to that bill. When you're asking,

“Will financial help be required?” yes, I think it will. As a matter of fact, I attended a northern Ontario heritage fund flagship proposal meeting last Friday and I warned them; I said, “Please keep agriculture as one of the flagships, because I think we're going to need it.”

I myself am a medium-sized farmer, I guess, in the 149-to-400-acre category, and I raise sheep. I understand my colleagues have spoken to you and educated you quite fully on the habits of sheep, their likes and dislikes. Their dislike of water, actually, makes it a real treat for footbath time. It's a real test of wills and ingenuity at that point to get them to walk through that puddle.

Rumours are rife about what the legislation may be, and this is what has got a lot of the farmers worried and a lot of farmers saying, “That's it. I'm quitting.” With my interest in economic development, that's the last thing I want. I attended Dr Galt's rural renewal round table discussions up here on a Friday evening, along with several others who obviously don't have a life. It's important to us. I think the approach has to be made very carefully with the legislation and the concerns have to be fully addressed.

One of the concerns up here is what constitutes an actual farmer. Is it anybody who raises one animal that has nutrient to get rid of? I have a neighbour who has one Jersey cow, two sheep, pigs, several ducks and chickens. Does she fall under the bill requirements?

The NMPs are to be prepared by certified people. Does that mean educated farmers are certified people or do we have to hire someone to help us with those? At a cost, obviously. Will the buildings requirements called for under the regulations be pan-Ontario? Frost levels are different in different parts of the province. Will the storage all have to be on cement? Is there some latitude in that, depending on the soil type, the soil constitution of any particular farm? Again, trying to perhaps save on costs.

I'm pleased to hear of the research on composting. I am a sole owner of a farm. I like to compost the material for a year because of disease control, because sheep are a parasitic animal and this helps destroy some of the worm burden rather than just putting it flat out on fields to be taken up.

We also share this land with other livestock that are not agricultural. Will fencing our streams and watercourses interfere with the natural migration and access patterns of our moose, our deer and our elk? That's going to call for extra supervision of these fences. We already know what they can do to a fence through the back 40; again, extra costs. The rumours are rampant about that particular one. I'd like to see some research if we are required to fence watercourses. How can we make that area productive? In northern Ontario, you have to gather up probably about 800 acres to get 80 acres of arable land. If you have to fence all the watercourses and all that property or just the watercourses your livestock are apt to get to, again, there's a cost factor. How can we get a cost benefit to that?

I like to pasture my animals. They are fed outside in the winter. Will this contravene the proposed legislation?



As part of my pasture renovation, I roll out round bales on a selected paddock behind the barn each year. The animals go out there to feed. They need their exercise. As one of our colleagues, Walker Riley, used to say, "There's a leg at each corner." They should walk to their feed.

The figures show that half the Blue Sky farms are small farms—and we will imagine with those accompanying margins—so I'd just respectfully ask that the legislation take that into consideration. Thank you.

**The Vice-Chair:** We have time for approximately two minutes for each caucus.

**Mr Peters:** A number of really good points: the one—and it is a first since we've started this—is the fencing and the effect that could have on the wild animal population. That's an interesting point and one that, whether it is in the north or my area in southwestern Ontario, is something that we are going to have to think about. I appreciate your bringing that point forward.

From your standpoint with your own operation—one of the areas that is being discussed is that a lot of farmers have practised no-till on their farms, and there's some discussion now that the manure is going to have to be incorporated into the ground—how would that affect you? You just said that you compost for a year to destroy the parasites or pathogens and then you go and spread. Having to incorporate, will that be something new for you? What kind of potential hardship would that be for you?

**Ms Smyth:** As I mentioned, I am a sole farmer. First, I'll probably have to learn how to plow properly. I depend on custom operators or whatever. It depends on their availability. I am learning new skills all the time. I will admit this. I learned how to download Adobe Acrobat as a matter of fact for this particular exercise, which does bring me to one other point. About 35% of farmers have computers. The e-filing might be a difficulty.

Apart from that, yes, I think that plowing something down simply because it has to be plowed down to take care of the nutrient load is perhaps not economical with fuel costs what they are now. Just the base cost of reseeded an acre of land is astronomical. We've been told to economize and to conserve. I use long-term pastures. That's where the nutrients are spread. Yes, that will become a problem for me if they have to be incorporated, bearing in mind of course that sheep manure is different from other nutrients.

**Mr Peters:** Good manure, bad manure.

1040

**Mrs Molinari:** I just want to make some comments. Your presentation was excellent. Some of the comments you've made we have heard from the sheep producers.

Coming from the city, as an individual who has not been exposed very much to the challenges of farmers, I must tell you that through these hearings I have learned a lot, and I appreciate having had the opportunity to learn as much as I did: something from as simple as knowing

that sheep don't like water, to biosolids and a number of others, so I've appreciated the opportunity.

You've asked a number of questions which are, in effect, good questions. If there is an opportunity for you—I know the committee will be continually receiving input in writing—to answer some of those questions for us, that's what we're here for. We have a lot of questions and what we're looking for in the consultation process are answers. How would you answer that concern and that question? What would your suggestion be for the committee, for the minister, to be able to respond to some of the concerns that you have? Having heard the numerous presentations, some are consistent and some are at opposing ends. So as a government, as a committee, it's a challenging task in trying to take all of those and come up with the best plan. We certainly hope we can do that.

Also, your comments that literacy in the rural areas is a lot less: I'm sensitive to that comment in trying to build an education for the farmers. In order to comply with new legislation and new things that are coming forward, if literacy is an issue, then there would be more of a challenge for them to be able to understand what it is that the legislation is trying to do.

I wonder if the local committees that we've talked about, that are going to be responding to some of the disputes that could arise, could take an active role in the type of education as well. I don't know whether that's been talked about as yet, but it just came to mind as you were talking about some of the issues. The local committees would be more sensitive to the local farmers and what the local needs are, and to what level of literacy and how much they can learn and how much they can take in any one given period of time.

I don't know how much time we have, but a brief comment on how you see those committees working and assisting us in that.

**Ms Smyth:** I think that would be an excellent idea, because we know who our bad apples are. As in the case of OFAC, Ontario Farm Animal Council, it's a peer pressure type of thing to smarten up and clean up your act, bearing in mind that farmers as a lot are an independent group and northern farmers still keep that frontier mentality to the nth extent. But that type of approach, that ground level approach, as opposed to the draconian from the top, I think would be much greater.

**Mrs Molinari:** Coming from their peers, it would certainly have more of an effect.

**Ms Smyth:** I think it would have more effect.

**The Chair:** Thank you, Ms Smyth, on behalf of the Blue Sky Economic Partnership.

#### ONTARIO FARM ENVIRONMENTAL COALITION

**The Chair:** Our next delegation is the Ontario Farm Environmental Coalition. Good morning, gentlemen. Each delegation has 15 minutes. Having said that, as we've been travelling mainly in eastern Ontario and we've been at the plowing match and have chatted with a



number of others—certainly yourselves and people with the federation of agriculture—we have discussed this through the committee and we wish to, after this 15 minutes, open it up for a bit more time. We did this in Kemptville, and I know some of the MPPs may want to also have a dialogue or a summary statement.

Please proceed. There are familiar faces here, but we would ask you to identify yourselves yet again for the Hansard recording.

**Mr John FitzGibbon:** I'm John FitzGibbon, chair of the OFEC steering committee.

Good morning and thank you for the opportunity to address the committee. We'll keep it fairly short and simple and try and address the key points with respect to the legislation. We're not going to deal with the regulatory elements; there's another day for that.

The coalition lauds the government on this initiative. It's long overdue and it's an important initiative to protect the environment, as well as to benefit agriculture.

We have some concerns with respect to the act. Specifically we're concerned with the specification of the ministry responsible. If we look at the detail in terms of both definitions and applications of those definitions in the act, it almost exclusively deals with agriculture. The act as it is currently defined is the Nutrient Management Act, not the Agricultural Nutrient Management Act. We believe that agriculture is what is being specifically dealt with here. It is not dealing with golf courses, it's not dealing with parks and it's not dealing with urban applications for aesthetic purposes. If that were the case, then, clearly the broader title would be appropriate.

Because it is the agricultural application that is being dealt with, we feel strongly that the Ministry of Agriculture be the lead agency dealing with this, both because of their expertise in this area and because of their integrated and intimate knowledge of the industry and the partners they have within the industry.

We note a couple of other things. It is suggested that the appeals process is reviewed by the Environmental Review Board. At the present time we already have a review board for farm practices. It would be confusing and possibly contradictory at times if indeed we had two boards dealing with best practices in agriculture. It is preferable that we have one—one which, again, is knowledgeable and understanding of the complexity of agriculture as an industry.

In part II of the act we see a great deal of listing of various areas where the act may be applied, dealing with everything from the nature and composition of nutrient materials being applied to land, to timing, to size of facilities etc. Many of these details we feel are unnecessary and may become prescriptive. It is important the act not take the ability to manage away from the operator on the farm. And prescriptions don't work in agriculture. It's an extremely complex business. We have about 25 different types of farming systems in Ontario and many combinations of farming systems. If we were to write regulations appropriate to each type of farm, we would probably have a blue book bigger than that attached to the Environmental Protection Act.

This I don't think is productive. What we need is something simple and straightforward. The key element of the act in its implementation is the nutrient management plan. That plan is an obligation on the part of the farm operator to meet the objectives of the province in protecting society, in protecting water and reducing odours and in dealing with protection of the environment. Focusing on the plan as the instrument and the outcomes is probably more appropriate than dealing with the means. So it is important that the province specify what it wants to achieve with this act rather than how to achieve it and give the operators of farms the opportunity to adapt their solutions on a field-by-field basis. This is more precision than can be written into the act, it is indeed more precision than can be written in the current myriad of local bylaws, and it gives protection on a case-by-case basis. Simplicity will allow this to work; complexity will lead to a bureaucracy which will be both wasteful and inefficient in achieving the province's ends.

One of the other issues we have is that if we look at the data we have today, many farmers are not in a position to comply with the act, although there are very many significant advances having been made. Probably 50% of the area farmed in Ontario has been subject to bylaws now from anywhere between three to five years. Compliance has been good. Some 30% of farmers currently have environmental farm plans which go beyond the scope of this legislation, and significant numbers, depending on size of farm, already have nutrient management plans and are routinely testing both soil and manure in its application.

Significant areas of capital investment are required, particularly in the storage of nutrients and in the control of runoff. These costs will be significant. Nowhere in the act do we see the opportunity for an allocation.

Setting a priority: we know that governments do not like to be constrained in their budget-setting. It is important that some priority on a legislated basis be given to the funding of the development and compliance. Surely the farmer will pay for what is in the private interest but certainly society should pay for what is in the public interest.

If you have any questions, we'd be pleased to answer.

1050

**The Chair:** I think we'll just open it up now. Mr Peters, comments or questions?

**Mr Peters:** Not so many comments right now. I appreciate the fact that Paul Verkley has been at virtually all of the sessions. I think that's been important, to have him here throughout those sessions.

I respect the point of not dealing with the regulations. We've heard the commitment made—we've heard it today and we've heard it numerous times through the consultations—that there will be consultations on the regulations. I think that's a positive step, because as we all know, the devil is going to be in the details.

I'm trying to think where to start. I guess one of the first questions I would ask is, you made the point in the beginning that we're not dealing with golf courses, urban



parkland or playing fields. Should we have been dealing with those areas?

**Mr FitzGibbon:** We know Quebec has moved to deal with those areas and has moved toward legislation. This is a societal choice. Do we want to deal with all nutrients or those with agriculture? Runoff from urban areas in terms of nutrient and bacterial status is not much different from raw sewage. In that sense, it is a threat from concentrated areas to society's interest in a clean environment as much as is runoff from agriculture.

**Mr Jack Wilkinson:** On Mr Peters's point and further to John, our view from the farming community always was that all nutrients had to be considered. If you're going to deal with contamination of surface and groundwater, you have to put a plan in place that would deal with all the risk factors. We concur from the farm community that we're probably viewed by society, with what's been taking place with the building of large livestock units, as one of the obvious places where we should have nutrient management plans, but we think biosolids need to be covered, sewage sludge needs to be covered, all areas need to be covered. We accept the notion that that is a huge job and maybe we start first here, but we do believe that if you're going to seriously address groundwater and surface water, we have to have a nutrient management system in place for all the people in Ontario.

The only other point I would like to make—and I shouldn't say the only other point because I like to talk a lot, but the only other point right now—is I want to ask whether the committee has actually seen a nutrient management plan.

**Interjection:** No.

**Mr Wilkinson:** I think this is something you should do before you make decisions. The reason is, we keep talking at our end—because we've been dealing with this issue for so long, we take for granted that everybody knows what we're talking about when we say you can do this by site-specific with a nutrient management plan and you don't need to have all these regs etc. Really the fundamental reg, if we were going to write it, would be to require every farmer to have a nutrient management plan, period, and then in the nutrient management plan that's where you get very site-specific, deal with slope, deal with nutrient loading, deal with placements away from other buildings, headwaters of wells etc.

I don't think you will ever understand as a committee what we're advocating here of enabling legislation that's very general, site-specific, using the nutrient management plan, unless you let some of our staff come in. We really think it would be critically important for, say, David Armitage to come in and walk through before you make decisions just how really detailed this nutrient management plan is. If farmers are willing to sign on to that as part of the legislation, I think you will be very surprised what degree of regulation we're agreeing to sign on as far as changing our management practice, because of the detail and intrusiveness of that plan. I would really recommend that, because when we say,

"Oh, you don't need that reg over there because it's dealt with in a nutrient management plan," you'll understand exactly what we're talking about and the degree of detail in that.

**The Chair:** I know a number of members of the committee have seen a nutrient management plan. I've never had to fill one out on my farm, given the nature of our farming, but I hear what you're saying. As we go to the regulation stage and as second reading will be approaching for this legislation, I think that would be an excellent idea.

**Mr Wilkinson:** Can I just do a rebuttal? One of the points that John's made here is that we don't think we need the degree of regulation that is being proposed in the enabling legislation. To accept that notion, I would suggest that it would be good for all committee members to see the detail we're suggesting in the nutrient management plan and then you might be willing to accept our notion that you don't need the degree of regulation that's being proposed in the enabling legislation. That's my only point.

**Mr Peters:** Mr Chairman, are you going back and forth for questions?

**The Chair:** Yes, I think we can come back to you, Mr Peters.

**Mr Peters:** OK, sure.

**Mrs Molinari:** Certainly some of the comments that you made in your presentation, that simplicity will allow it to work—I am a firm believer in making things simple so people understand it and know what the expectation is in order for it to work, because complicating it leaves more ambiguity and more cause for diverting from the initial plan. So I appreciate those comments.

I've been wrestling with how to make this legislation, this bill, the regulations, accommodate individual municipalities and individual farms so that it doesn't have—because, as I've stated before, I truly believe one size doesn't fit all and there has to be some local autonomy there. Your comments about the nutrient management plan might in fact accommodate for some of those, I guess, unique situations in each of the municipalities.

Having said that, we still need legislation that has the broad perspective for all of the provincial government, everyone in the province, to abide by, and it could be as simple as everyone has to have a nutrient management plan, but you also have to have what that nutrient management plan has to have in it. You've got to have some template, something that meets all of the requirements that the ministry and the provincial government is trying to put forward.

Having been involved in this discussion and these consultations for the last few weeks, by virtue of being a member of the justice and social policy committee and not having had prior experience and knowledge with some of the issues that have been discussed here, I come to this committee and to these consultations with not a blank mind but an open mind to listening to all of the things that come forward. Certainly it's been an education for me.



But as members of our caucus and as the present minister and the previous minister, there have been a number of consultations and I know that your association has been involved too to some great extent back from 1998-99 when the concern was first raised, and it was increasing concern. The ministry took the initiative of producing a green paper—which I don't know whether you're familiar with; it was in the fall of 1999—and certainly consultations through January 2000; and the Galt-Barrett report, which I'm sure you're familiar with. Then the consultations on the report went to the minister in April 2000. It was released in July 2000, and the minister's response also in that same month. Then in September three ministries held additional consultations in Guelph—the Ministry of Municipal Affairs, OMAFRA, and the Ministry of the Environment, so further consultations. Of course, the staff has been continually consulting right through 2000 to 2001.

So it's been ongoing, and after first reading Bill 81 was posted on the Web site on the Environmental Bill of Rights for further input. It was there for 60 days and we have received good response from that from what I understand from staff, more so than in other times. There have been continuous meetings that have been occurring right through July 2001.

The consultations on this have been ongoing, and when I look at that and I see the list of how many people have had input in this and now, coming on this committee, I'm certainly looking at all of those consultations that have been put forward.

Some of the things that I have learned too: that it's not just the agriculture, but the bill actually covers urban sludge, pulp and paper, all of those, and we've had the benefit of having those come forward. Have you made comments on those other areas? My understanding is that your representation is mainly agricultural, but this bill is more encompassing and wider than that; it also covers pulp and paper and the urban sludge.

1100

**Mr Paul Verkley:** I might make a couple of comments, and one is that the reality is that the provincial government is coming to this issue rather late in the day. Because we within the agricultural community realize the province moves slower than the requirement out there, we therefore prepared the nutrient management strategy for the province and sold that plan to the local municipalities. These local bylaws requiring a nutrient management plan, requiring minimum distance separation, requiring 204 days' storage, were all done from the recommendation of the farm organizations that went to local governments and said, "Here is something." We came up with those standards and suggestions in conjunction with staff from the Ministry of the Environment, OMAFRA and MNR. We sat around and collectively hammered out what we thought would be appropriate and we sold that to the local municipalities as appropriate-type bylaws, understanding that we always wanted a provincial perspective and understanding that when we get into nutrients it does then also involve biosolids.

The reason the agricultural community feels reasonably comfortable with the use of biosolids is that just geographically you've got an urban centre generating biosolids; in most cases that urban shadow no longer has animals and there isn't the amount of manure, but there is crop land around. It's just a really neat, comfortable fix to have those urban biosolids applied to that land, which wouldn't otherwise get that organic matter, just by the nature of the farming.

We see that as a perfectly good fit, assuming that the product is safe for application. We've made great strides in the province with sewer-use bylaws etc, having cleaner biosolids to use. But that's going to be an extremely complex issue. The nutrient part of that will have to be managed like every other nutrient. That's the easy part. It's the politics around the other fine details that is going to continually take a lot of work and involvement by the farm community and other councils.

The other part is that we have to keep a provincial perspective on this stuff. We absolutely apply too much pressure on local councils if we leave the decision-making around farm practices and nutrient management in the hands of local governments. I was at public meetings where the public pressure was, "How do we set the minimum distance separation for livestock barns in this township?" Somebody stands up and says, "I think minimum distance separation should be the Manitoba border." Therefore we'll never survive in a democratic process on some of these issues. That's why governments have to come up with understandable regulations that everybody can buy into. There's always going to be a trade-off, so it's just vital that we sit down with the people who write the regs and standards so we can come up with appropriate ones.

The other thing I've noticed: a lot of times what we talk about and what we understand are sometimes two different things. I know there has been some disagreement or a little fuzziness around these agricultural advisory committees or peer review committees, and they're actually two different committees. We see the agricultural advisory committees—and a number of them made presentations. Their main function is to represent the agricultural concerns to the local councils. They work very well where they're in place, but they're not the committee that we envision going out and doing an on-site visit when there's a complaint about a farm practice. That is more a peer job. It's going to take some dedicated farmers, whom we have out there. It's just basically a voluntary position, but it requires some formality insofar as we can get insurance coverage and get some officialism in those visits.

**Mrs Molinari:** Would you see any overlapping between those two committees, or people serving on both?

**Mr Verkley:** It would probably be a subcommittee of the ag advisory committee, I think to structure it properly in a lot of cases. That's why a lot of people say, "No, when it comes to the on-site visit we want only farmers to come out." But I think within the larger committee



when we discuss local issues it's very appropriate to have non-farmers sit in, interested citizens sit in. We like that mix. So be careful when you hear that advisory committees stuff. Understand which committee we're talking about when you make references to what they do.

**Mrs Molinari:** With respect to the nutrient management plan, would you see every municipality having a nutrient management plan—urban, rural, throughout the province of Ontario—or would it be something that would be specific to certain areas?

**Mr Verkley:** The nutrient management plan is central to this whole regulation. You're not going to change the standard through this act. The standard is already, "Thou shalt not pollute." So this act does nothing to enhance that standard. Everyone—big, small, municipalities, everybody—has to live by, "Thou shalt not pollute." This just formalizes in a more public fashion how they plan to deal with their operation so that it doesn't pollute.

**Mrs Molinari:** So every municipality. I represent the riding of Thornhill, which is made up of two municipalities, the city of Vaughan and the town of Markham. So each one would have a nutrient management plan as well. It's a very urban area. Their nutrient management plan would obviously be different than others.

**Mr Verkley:** Yes. I like that the proposed legislation puts out that we would consider that not a nutrient management plan, but more a nutrient management strategy. Sometimes we realize that it may well be contracted out and that someone else does the actual application, and therefore it falls under the same kind of regime that farmers do. But they do need to be involved in that they need to know where it's going to go and that it's going to be appropriately handled.

**Mrs Molinari:** So there would have to be a template then to say "Thou shalt" a list of things, and then, depending on how each one does it, we'd do it in a different way. There has to be the regulation and the law that says, "Thou shalt not pollute," and other than that there are a number of other things that they need to do, other than just say, "You shall not pollute."

**Mr Verkley:** That's right, and, "Thou shalt utilize nutrients." This is kind of a given within the farm sector, and then we hear that Toronto's answer is, "Just ship it down the 401 and put it in a hole in the ground in Michigan." It tends to go against the whole perception of what we're trying to do here. Fair is fair. We need good plans, and we need it understandable. Like I say, keep it very simple.

**Mrs Molinari:** When it comes to the costs, we've also heard in the consultations that there needs to be some financial assistance. So this financial assistance would also go to the city of Vaughan and the town of Markham, which are the two municipalities that I represent. They would also need to be able to access that.

**Mr Verkley:** Yes, given the reality that you have the ability in writing the act of putting half the farmers out of business. The act has the potential to do that. I think you've heard enough cases. We, again, if you want further information, can dig up the income tax stats of the average net farm income in this province, and it's not

very hard to convince people that there simply isn't the net farm income to pay for that type of capital improvement on existing operations. I don't think we have to pull the wool over anybody's eyes here. There are facts out there, and the reality is that there is very little leeway for capital upgrades on existing operations.

**Mr FitzGibbon:** There are two elements in the act as it stands now. One is the nutrient management plan, which is undertaken by a given individual enterprise, a farm; the nutrient management strategies refer to the act applied to municipalities. I believe those are being applied to strategies for them to land-apply the sludge and other biosolids which they generate. It's unclear to me, at least as it's written now, whether that is really dealing with the municipal waste, municipally generated waste coming from the sewage treatment plants primarily. For the most part, the municipalities that I know of, and the GTA in particular, have very little problem finding land where people are prepared to receive the biosolids.

Again, and the point was made by Paul, in these areas close to the cities, animal agriculture has largely moved out for a variety of reasons. Most of it is cash crop, and receiving that organic material is in fact very beneficial to maintaining that land in the urban fringe. The costs to the municipality of doing this are significant, but are significantly less than treating the waste in the first place. For most municipalities, it's funded out of the tax base within the municipality, whereas the nutrient management plan on the farm is going to be funded out of the pocket of the entrepreneur at the cost of that enterprise.

1110

**Mrs Molinari:** Taxes go up to all the taxpayers, though, if it's funded out of their general tax base. The municipality puts that back on the taxpayers.

**Mr FitzGibbon:** But they're currently doing that now, it's not additional, and the strategy is just assuring the people of Ontario that the municipalities will have or do have the land base accessible for disposal of their sludge and other biosolids.

**Mr Wilkinson:** The is the one concern that we have on the biosolids and I'm not sure if it's been resolved to date. I'm don't think it has. A number of municipalities have said that they want the right to apply biosolids at a much higher application rate on a yearly basis than the crop that will be growing the following year would be able to use. The whole principle under this nutrient management plan is that you have a corn crop growing here, you take a soil sample, you take a manure sample, and you match the nutrients you're applying so that crop will utilize it during the growing season. That then minimizes the risk of pollution because we do not overapply the rates.

Municipalities have said, "That's too expensive for us to do. We want to be able to put on five times the rate, once every five years because it's not cost effective for us to match nutrients with the crop growing." We're saying, "That's not on." If farmers who have basically got no tax base, who've got very little reserve for money at all, are expected and advocating—as the only means to



deal with the risk of contamination of groundwater and surface water—matching nutrients to the usage, then municipalities, when it comes to biosolids, should not be able to put on five times the rate once every five years. That destroys the whole principle of matching the nutrient loading to the nutrient usage, and I think that needs to be addressed as part of this.

**Mr Peters:** I'd like to go to your second recommendation, where you talk of the establishment of a nutrient management unit. Yesterday we were in Peterborough. The former county of Victoria or Kawartha Lakes—whatever it be today—has 1,700 registered farms. Using that county as an example, what kind of an infrastructure are we going to have to create, ie staff and expertise, on a province-wide basis to deal with 1,700 nutrient management plans dealing with the on-the-ground concerns? Any thoughts on that?

**Mr FitzGibbon:** If you include all agriculture, at some point the province will have to deal with 60,000 enterprises. I think that's a very significant problem, because if you were going to collect the records and maintain them for the entirety of agriculture, that's a colossal undertaking.

If, on the other hand, the onus is on the farmer to maintain those records and comply, and have them available at any time when requested on an audit basis, then record-keeping falls to the individual rather than to the province. We think that's probably not a bad thing and that some kind of an audit system be set out there to see that compliance and record-keeping meets the standards as set out by the province. That would reduce the onus on building a fairly significant organization to deal with that. We also think that there clearly needs to be a group that can deal with the complaint basis. That is something that the province would have to have. An auditing function and a complaint function would be a fairly efficient process, whereas a comprehensive inventory and management system, we think, would be very expensive and exceedingly cumbersome.

**Mr Wilkinson:** The large livestock operations that are building will get picked up with the application for building permit. They will have to come to the municipality and show that they've got the land base, they've got a nutrient management system, the storage capacity, etc, to meet the requirements of the new legislation when it comes in. At our end there, we basically feel that'll be again on the onus of the individual to show that they have met the standards of the regulations and the enabling legislation.

John said, "probably should." To me, if we try and create a provincial system that is going to try and go over everybody's yearly nutrient management plan with a degree of detail, it will just be absolutely incredible. Even on the industrial side and municipal side, everybody has accepted the notion that the municipality or the individual business has a responsibility of meeting guidelines, and if it's complaint driven or by audit, you deal with those people that for some reason someone indicates are not meeting the standard. Otherwise, the cost would just be staggering, and if that cost was transferred to the

individual farm, you might as well just turn the key off in rural Ontario.

**Mr Peters:** We've heard a lot of talk of Walkerton and we know that there's going to be a report generated at the conclusion of the Walkerton hearings. I know there's anxiousness to get on with this legislation, but is there merit in our holding back and waiting to see what comes out of Walkerton as to how that might relate to either (a) the legislation or (b) the regulations?

**Mr Verkley:** I'd make the comment, having been fairly closely involved with the Walkerton hearings etc, that the right thing to do is still the right thing to do. I think the agricultural industry in the Walkerton scenario came out looking very proactive and better than most other segments because we have been paying attention in an organized fashion in how we deal with our nutrients and the environment. This is just one more step.

As I say, we look forward to it because it makes sense, because it attacks the fundamental perceived problem and that is usually lack of knowledge about what we're dealing with. Through a nutrient management plan on every farm, we can say every farm has regard for how they are handling that. It gives us a tool if there are shortcomings.

Remember, this will be a living document. It gives the opportunity to come in if there's a problem that shows itself and we have the tool to address those concerns. We can change the components within a nutrient management plan over the years. We can highlight areas if we have concerns and add them or take them away. That's the really nice part about this legislation and it's the part that we really highly endorse. There's also the potential for a downside, but we're aware of that and we can certainly get that message across to the politicians and people who set the regs and standards.

**Mr FitzGibbon:** I think the regulations generated by this act will change through time as we learn more. If you look at what's happened under the Environmental Protection Act, regulations routinely change as we learn more about the problems and understand how the industry has evolved. As we get new technologies, we will have to change regulations under this act. I think if the act is empowering and sets the objectives that the province wants to achieve, then the regulations and indeed the plans that are generated through that regulatory process will provide the means.

I think there are other tools out there that I would hope Walkerton addresses. In the Water Resources Act we have, and have continued to have, the power to designate water supply areas with specific controls. Under that authority, water supply areas, which is the chief concern of the Walkerton inquiry, could well be dealt with.

This deals with a much broader issue, an issue that has been on the table before Walkerton. What we're dealing with here is protecting the broad quality of the environment, not just for existing uses but for future uses. The people in agriculture are the closest people to that environment, and they really want to see that protection in place.



**The Chair:** Mr Wilkinson, and then we'll have to wrap it up.

**Mr Wilkinson:** If I could leave two points, because I don't think people on the committee quite get it yet. I'm not talking down. I think there are two things that have to be understood before any of the communications from our community can make sense at all.

1120

Number one: enabling legislation across the province, as long as it requires nutrient management plans, puts it into a very site-specific, on-the-farm, on-the-ground situation that deals with proximity to water, streams, ANSIs, wetlands, wellheads etc. That makes it so this is not one size fits all. That's your point. The legislation can be enabling requiring nutrient management, and that drives it right down to that individual farm, then. It deals with it whether it's livestock, horticulture, cash crops, whatever. So it makes it very site-specific, and you let the detail and flexibility into the plan with some very broad requirements out here that match the whole problem. That, to me, is key.

The other is the only reason we should get any capital grants for meeting a new standard is to accept the notion that we're advocating changing farm practices ahead of pollution. Right now we fall under the environmental regulations and if we pollute, we get fined the same as everybody else. What we're advocating here is to reduce risk to groundwater and water contamination. We as a farm community are handing you what we think is a reasonable response on a silver platter, with buy-in from just about every farm organization in Ontario and many municipalities, a way to adapt our practices to substantially lower risk: longer days of storage, matching nutrient-loading with soil samples and crops we're growing etc.

If we're willing to do that, we think society in general is willing to help us go to that new bar that's being raised, which is not a pollution bar. This is a change in our practices to minimize future risk. We think that's way ahead of what most other industries do and we think society in general is so concerned about future contamination, they would be quite happy to assist us meet that new standard.

**The Chair:** Fine. Thank you, gentlemen. We will have to wrap it up.

Further to the previous request, a discussion around nutrient management plans, I realize that some of us may have copies of them and some on the committee may not. With the permission of the committee, I would ask legislative research to acquire a blank nutrient management plan and perhaps one filled out in confidence—I would consider it a case study, if you will—for committee members. I would like to make it available to the many other rural members who also sat on this committee. They weren't formally members of the committee, but have been following this for several years.

**Mr Peters:** I just want to reiterate two things from yesterday. One was that there has been some question about these being public documents, so that we do need to request the Information and Privacy Commissioner to

review that point. The second one was that there was reference made yesterday to decisions of the farm practice and products board—just to ensure that any of those decisions don't conflict with the direction this legislation is going.

**The Chair:** I'll turn to Avrum.

**Mr Avrum Fenson:** Yes, I've read through that question and I'm working on it.

**The Chair:** As Chair, I don't get to say much, but I have a personal interest as well with respect to the nutrient management plan. I guess I have one simple question: does this apply to golf courses—I want to pin that one down—and the application of septage, how that would apply or be filled out on a nutrient management plan, the application of pulp and paper biosolids—we are in North Bay, for example—and how that fits on a nutrient management plan and the application of municipal sludge or biosolids. I guess I have a personal interest, also, because in spite of what we may have heard, this legislation is dealing with more than agriculture; it's dealing with pulp and paper sludge and septic tank septage. Most times, it is put on agricultural land, but it's put on other, not agricultural land. Paper sludge is put on forest land. I have an interest—it's my last kick at the can—in where the paperwork is and what kind of paperwork the forest companies and municipalities go through with respect to certain heavy metals and other products. I'll just throw that out to the committee.

**Mr Peters:** Just dealing with the septage issue, I think it would be important for us to know. As a province, we collectively own a number of provincial parks, we collectively own roadside centres and things like that. I think it's important to know how we are dealing right now with septage, what the impact is going to be on those parks and what Ontario Parks is going to do once this legislation is put in place.

**The Chair:** I agree. We have not heard enough about septage in these hearings.

I wish to conclude the hearings. I've only missed one plane this week and I don't want to miss another one. I now wish to adjourn. This concludes nine days of hearings on this issue.

**Mr Peters:** Mr Chairman, I think this is important: I just want to thank you for what you've done over the past nine hearings. I think you've done a commendable job. We haven't had any controversy. I think we've worked very well together in dealing with the issues. I just want to say thank you for your efforts in making sure we kept focused on what we were doing, and I'd thank the staff, too, for everything.

**The Chair:** I do wish to thank the staff. These guys have to pack up electronics in a real hurry. I appreciate Mr Peters—he's been at every hearing, including the other two before—Mrs Molinari for your interest in agriculture—I know your family farm background is more in olive orchards, but I appreciate your interest—and Mr DeFaria.

We now adjourn.

*The committee adjourned at 1127.*











## CONTENTS

Friday 21 September 2001

<b>Nutrient Management Act, 2001, Bill 81, <i>Mr Coburn</i> / <b>Loi de 2001 sur la gestion des éléments nutritifs</b>, projet de loi 81, <i>M. Coburn</i> .....</b>	<b>J-495</b>
Gagnon Renewable Resources.....	J-495
Mr Rick Gagnon	
Mr Warren Maskell	
Northeastern Ontario Goat Milk Producers Group .....	J-497
Ms Michèle LaFramboise	
Lystek International .....	J-499
Mr Cam Gray	
Mr Klaus Wand.....	J-500
Temiskaming Federation of Agriculture; Cochrane Federation of Agriculture .....	J-501
Ms Fran Nychuk	
Ontario Federation of Agriculture, Northeastern Region .....	J-503
Mr Frank Giguere	
Blue Sky Economic Partnership, Agriculture Sector .....	J-505
Ms Sandra Smyth	
Ontario Farm Environmental Coalition.....	J-506
Mr John FitzGibbon	
Mr Jack Wilkinson	
Mr Paul Verkley	

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### Chair / Président

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### Vice-Chair / Vice-Président

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### Substitutions / Membres remplaçants

Mr Steve Peters (Elgin-Middlesex-London L)

#### Clerk / Greffier

Mr Tom Prins

#### Staff / Personnel

Mr Avrum Fenson, research officer,  
Research and Information Services

2 CN  
14  
677



## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 22 October 2001

# Journal des débats (Hansard)

Lundi 22 octobre 2001

## Standing committee on justice and social policy

Subcommittee reports

Remedies for Organized Crime  
and Other Unlawful  
Activities Act, 2001

## Comité permanent de la justice et des affaires sociales

Rapports du sous-comité

Loi de 2001 sur les recours  
pour crime organisé  
et autres activités illégales

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Monday 22 October 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Lundi 22 octobre 2001

*The committee met at 1529 in room 151.*

## SUBCOMMITTEE REPORTS

**The Vice-Chair (Mr Carl DeFaria):** Shall we call the committee to order?**Mr Peter Kormos (Niagara Centre):** Is there a quorum?**The Vice-Chair:** I think a quorum is present.

The first order of business is the report of the subcommittee on committee business dated October 16, 2001. Do I have a motion?

**Mr John Hastings (Etobicoke North):** I have a motion dealing with a report of the subcommittee:

Your subcommittee met on Tuesday, October 16, 2001, to consider the method of proceeding on Bill 14, An Act to encourage awareness of the need for the early detection and treatment of brain tumours, and recommends the following:

(1) That the committee have public hearings and clause-by-clause consideration on the bill on Tuesday, October 23, 2001. The committee will spend one hour considering this matter.

(2) That Mr Wood will provide the clerk with a list of witnesses to be scheduled.

Do you want me to continue, or do we deal with moving that recommendation first?

**The Vice-Chair:** Let's do one at a time.**Mr Hastings:** All right. I move that motion dealing with the report of the subcommittee.**The Vice-Chair:** Is that motion adopted? Carried.**Mr Hastings:** The next one deals with a report of the subcommittee:

Your subcommittee met on Tuesday, October 16, 2001, to consider the method of proceeding on Bill 30, An Act to provide civil remedies for organized crime and other unlawful activities, and recommends the following:

(1) That on October 22, the committee will have clause-by-clause consideration on the bill.

(2) That amendments for the bill should be provided to the clerk by October 19, at 12:00 noon.

(3) That staff be available to answer questions on the bill from any committee member.

I move adoption of the same.

**The Vice-Chair:** Mr Hastings has moved adoption of another motion. Is that carried? Carried.**Mr Hastings:** The next item deals with a report of the subcommittee:

Your subcommittee met on Tuesday, October 16, 2001, to consider the method of proceeding on Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other acts, and recommends the following:

(1) That the committee invite the Minister of Agriculture, Food and Rural Affairs and the Ontario Federation of Agriculture to come before the committee on Tuesday, October 23, 2001. Both groups will be offered 30 minutes in which to address the committee.

I move adoption of that item of the subcommittee.

**The Vice-Chair:** Mr Hastings has moved that item. Shall that item carry? Carried.**Mr Hastings:** The next item deals with a report of the subcommittee:

Your subcommittee met on Tuesday, October 16, 2001, to consider the method of proceeding on Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students, and recommends the following:

(1) That the committee hold public hearings in Toronto on the bill on October 29 and 30.

(2) That the committee conduct its clause-by-clause consideration on the bill on November 5.

(3) That amendments for the bill should be provided to the clerk by November 2, at 12:00 noon.

(4) That groups be offered 20 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations.

(5) That the clerk place an advertisement on the Ontario parliamentary channel and on the Internet. If possible, an advertisement will also be placed in the four Toronto English dailies and in the largest Toronto French newspaper. The advertisement will indicate that application for the reimbursement of travel expenses can be made in writing by submitting a claim to the clerk.

(6) That the Chair authorize the payment of reasonable requests by witnesses to have their travel expenses reimbursed.

(7) That the deadline for making a request to appear before the committee be October 24 at 12:00 noon.



(8) That the deadline for submitting written submissions be October 30 at 12:00 noon.

(9) That all witnesses be scheduled if time permits. If there are more potential witnesses than there are time slots, the subcommittee will meet on Wednesday, October 24, at 3:30 pm to determine the priority for scheduling the witnesses. If there are empty time slots, additional groups can be added to the agenda after October 24.

(10) That each party can submit a list of potential witnesses to the clerk by Wednesday, October 24, at 12:00 noon.

(11) That staff be present in the committee room to answer questions posed by any committee member.

(12) That the research officer prepare a summary of recommendations.

(13) That there be no opening comments at the start of clause-by-clause consideration of the bill.

(14) That the clerk be authorized to begin implementing these decisions immediately.

(15) That the information contained in this subcommittee report be given out to interested parties immediately.

(16) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of this bill. The Chair will call another subcommittee meeting if needed.

I'd ask for adoption.

**Mr Kormos:** In view of item 14, can we ask the clerk to tell us whether there was compliance with item 5; that is to say, whether the advertisements on the parliamentary channel and the Internet and in the four Toronto papers and the largest Toronto French newspaper had the notice indicating that reimbursement of travel expenses could be made in writing?

**Clerk of the Committee (Mr Tom Prins):** Yes. They were in the four Toronto dailies last Wednesday and in the French paper, I think, on Tuesday—that's just the publication cycle. I can get you a copy of the wording of the ad.

**Mr Kormos:** One further thing very quickly: in view of the consideration of the prospect of a subcommittee meeting on October 24, can the clerk give us any indication about the number of applications that have been made to appear in front of the committee?

**Clerk of the Committee:** I can find out and get that information to your office.

**Mr Kormos:** Thank you kindly.

**The Vice-Chair:** Mr Hastings has moved adoption of the last subcommittee report. Shall that motion carry? Carried.

If I may, for the information of people present: we allow photos to be taken, but not flash photography. If you just turn off the flash, you can still take pictures. Thanks.

**Mr Kormos:** Chair, if that's not at least 400 ASA film, I don't think that's going to work very well.

**The Vice-Chair:** Thank you, Mr Kormos. I understand from the clerk that it may—

**Mr David Tilson (Dufferin-Peel-Wellington-Grey):** Please proceed.

1540

# REMEDIES FOR ORGANIZED CRIME AND OTHER UNLAWFUL ACTIVITIES ACT, 2001

## LOI DE 2001 SUR LES RECOURS POUR CRIME ORGANISÉ ET AUTRES ACTIVITÉS ILLÉGALES

Consideration of Bill 30, An Act to provide civil remedies for organized crime and other unlawful activities / Projet de loi 30, Loi prévoyant des recours civils pour crime organisé et autres activités illégales.

**The Vice-Chair:** The next item for the committee is clause-by-clause on Bill 30.

There was a motion by Mrs Ecker that was approved, which reads as follows:

"That the standing committee on justice and social policy shall be authorized to meet in Toronto for one day for clause-by-clause consideration of the bill."

We'll proceed with that.

**Mr Kormos:** On a point of order, Chair: You do have 400 ASA film, but it's colour, and as you know, the temperature of this lighting is going to cause a colour shift in the film. If she shoots without the flash, she's going to get horrible colour. So if you're reproducing those in colour, the shot is worthless. If you're reproducing them in black and white, you might get away with it.

**The Vice-Chair:** Thank you, Mr Kormos. That's not a point of order. If we could just proceed—I think she has taken enough pictures. We will proceed with clause-by-clause.

Let's start with section 1. There are no amendments submitted for section 1.

Shall section 1 carry?

**Mr Kormos:** With respect, we are going to debate in clause-by-clause as well.

**The Vice-Chair:** Is there any debate on section 1?

**Mr Kormos:** Thank you kindly. Very quickly—and I don't intend to do this on every section, but section 1 is as good a place as any to simply make these remarks.

You know that the New Democratic Party is not happy with the bill. We weren't happy with the bill in its first incarnation, and we had some considerable public hearings when there was consideration of the first bill. One of the very specific areas toward the end of the bill was not drafted into this bill because circumstances changed in terms of that ministry's input. But our objection is a fundamental one.

We have no objection to the state having the authority to intervene to disrupt the collection of proceeds of crime and the accumulation of them—none whatsoever. We endorse, as we did in the first round of committee hearings, the Criminal Code sections. You heard, as did everybody in the committee, that some police forces are

more successful than others in utilizing those sections. We understand that those sections in the Criminal Code present a fundamentally higher hurdle for the prosecution, for the police—for the state when it's seizing proceeds of crime. That is because it's required to meet the criminal test of proof beyond a reasonable doubt.

Our concern with this bill is that it attempts to do something that is clearly within federal jurisdiction. We can say, "That's for the courts to resolve down the road on a constitutional argument or test," and I'm sure the Attorney General would have arguments, even today, based on their consultations with any number of lawyers, be they private sector lawyers or lawyers in the ministry, who have examined that issue and tried to avoid that problem down the road. But it still leaves the more fundamental issue; that is, that this bill, this piece of legislation, uses the civil test of proof to determine whether something is indeed the proceeds of crime. We submit to you that when you're dealing within a sphere of basically criminal activity, the criminal test of proof beyond a reasonable doubt, in contrast to the historic civil test of balance of probabilities—50%-49%—we believe that when you're dealing with criminal offences, and that's what we are dealing with, the test should be one of proof beyond a reasonable doubt.

We heard a myriad of submissions in the course of considering the last bill. Nobody could not have sympathy for the police. The police, it's clear, indicated they would love this bill. To be fair, and in no way to be critical, the police would also love to be able to do more warrantless searches. It's obvious. You don't have to be a rocket scientist to figure that out. The police would love, from time to time, to be able to detain people for a longer period of time than they're permitted to under the current law. The police would love, from time to time, to be able to detain people without the need of advising them of their right to counsel, as the charter obligates them to, because, yes, that would make the work of police officers much easier. I have no quarrel with that proposition.

But the reason we have those safeguards is to protect the innocent. Our fundamental concern and the reason for our non-support of this bill at this stage—and there's nothing before me today that indicates that position will change—is that this bill puts at risk people who are perfectly and thoroughly innocent Ontario residents. It puts them at risk; it puts their personal property at risk. There has been no effort to even compromise. We heard from any number of participants in the committee hearings into this bill's predecessor about the middle ground between proof "beyond a reasonable doubt" and the "balance of probabilities." You heard Mr Borovoy from the Canadian Civil Liberties Association, for whom we should have some significant regard on this issue, comment on the bill in that respect. There has been no effort to create that middle ground.

In the absence of that, our response to this bill both at clause-by-clause and, quite frankly, at the end of the day in the House on third reading is going to be one of non-support. We believe that this gives the state some

significant new powers and that those powers are not properly balanced by a sufficiently high standard of test in terms of the type of proof, type of evidentiary burden, that exists in the course of pursuing the goals. The goals we admire, but the test is not sufficiently high to guarantee that innocent people will not be put at risk.

**Mr Michael Bryant (St Paul's):** Surely a terrorist's best friend is a mobster. There is an inextricable link between organized crime and terrorism. The United Nations' General Assembly has repeatedly, through resolutions, acknowledged and emphasized the link between the drug trade, organized crime and terrorism.

The special Senate committee on security and intelligence, in its report of January 1999, reiterated this link and gave one example. "The evidence before the committee," in their words, "indicated that these rings," these alien smuggling rings, "generate substantial profit from smuggling and in some cases involve organized crime. There is concern," the committee went on to say, "that such rings could be used to smuggle terrorists."

Furthermore, we heard during committee hearings from the Criminal Intelligence Service Canada director, Richard Philippe—and it may not have been in the hearings; it may have been in a written submission. I regret I'm not sure which was the case. In any event, through the hearings we learned that the Criminal Intelligence Service Canada director reported that over a 24-hour period in this country, about \$6 million worth of heroin will be imported into Canada, 21 to 43 illegal aliens will arrive, \$14 million will be obtained through telefraud, and 500 vehicles will be stolen.

There is no doubt that there is a link between organized crime and terrorism through financing of terrorism, on the one hand, through to its operations, including smuggling rings, on the other hand. We need to hit terrorists, therefore, in the pocketbook, just as we're hitting organized crime in the pocketbook.

Premier Harris on September 24 committed his government to doing just that. On September 24 the Premier made a statement in the Legislature. It's important that we realize this was not a response in question period. This was not a remark made in a scrum. This was not an off-the-cuff remark. This was part of his speech on September 24 where he was outlining to the province of Ontario and the nation what the Harris government was going to be doing to fight terrorism.

He said the government was going to "look at strengthening any provincial legislation that could be used to prevent terrorist acts, including possible changes to the Remedies for Organized Crime Act to cut terrorists off financially." The Premier made that commitment, and in fact it was the only substantive commitment made by the government in terms of changing our laws. We heard from the government that they had hired a couple of security advisers as management consultants; literally they are retained as management consultants to the government.

1550

In terms of changes to our laws, on September 24, at a time when Parliament was moving forward and introduc-



ing their draft antiterrorism bill and when state assemblies south of the border were debating, if not passing, draft legislation to hit terrorists in the pocketbooks, this government was talking about making these amendments to Bill 30. When it came to my attention that the government was not in fact going to bring amendments to Bill 30, I asked the Attorney General about it on October 4.

First, he said that the Premier said "we would be reviewing the legislation." Look, the Premier made specific reference to this bill and said that the government was looking at making changes to Bill 30. Now the government, as I understand it, is not going to do that. The Attorney General basically confirmed, in his non-denial denial, that no such amendments were going to be made to Bill 30. The Attorney General said, "If you have some suggestions as to how to improve this legislation in relation to organized crime or in relation to some other unlawful activity, we're prepared to consider it." That was very kind of the Attorney General.

We have introduced amendments, as you know, Mr Chair. I'm going to be speaking on the merits of those amendments at that time. Let me say this: if Bill 30 did not need amendments—I'm sure it is going to be the position of the government in a moment that Bill 30 doesn't need any amendments—then why did the Premier say the government was going to be making anti-terrorist amendments to Bill 30? Why would the Premier say otherwise? Because this government has broken that commitment, for whatever reason, we felt compelled to introduce amendments to ensure that terrorists are hit in the pocketbook by Bill 30.

Let me say this about the bill and our position on the bill—and I reserve the rest of the time, when we get to each provision, to deal with each amendment. There are two major amendments: one dealing with proportionality of a just order, one dealing with the scope of an unlawful activity, and then there is what you might call a house-keeping amendment. Those are the two major amendments, but they span a number of sections. I'm not going to repeat myself on each section. I'll do it when I get to those amendments.

I would just say this: what is this government doing to fight terrorism? What is it doing? The federal government found out about the events of September 11 in the same moment, the same hour that the provincial government did. They have tabled legislation. Not only that, but we've known for weeks now what legislation was going to be tabled before Parliament. As I said, state assemblies—Washington, Nebraska, Indiana, Colorado, California, Oklahoma, to name only a few—have tabled or they've passed legislation to join the fight against terrorism. What has this government done?

The answer is, from a legislation perspective, nothing, nor have they indicated what they are going to do. We don't know. I know that some Canadians feel they're not getting the kind of briefing from Canada's government that they feel Americans are getting from their government. I don't know if that's true or not. That may vary from day to day. But be that as it may, they're getting no

indication from the Mike Harris government as to where this government is going. This would have been an obvious way to indicate the direction in which the government is going.

We already have a bill before us. We have an opportunity to get these amendments to Bill 30 made now. We don't have to wait for a bill to be reintroduced that covers much of the same ground. Surely this government is not going to introduce a separate bill just so they can get the added PR punch out of it. I would hope that would be beyond this government, to engage in that kind of politics when they could get antiterrorist tools before law enforcement officials and prosecutors right now.

Let me state the obvious. The official opposition is very open to amending the amendments before you should you have queries with the amendments you've had since Friday. I note it is really more of a courtesy than an actual deadline for the amendments to be filed on Friday, but I wanted to give the government plenty of time to consider them.

I note also that government members on Parliament Hill are willing to question their executive council. Member of Parliament Irwin Cotler has called for a couple of important changes to the federal government's anti-terrorism omnibus bill. He doesn't just do it in the back room; he does it on CBC Radio. I hope government members on this committee will be willing to raise questions too, to see if we can maybe make Bill 30 better, and I think we can. I'm not pretending for a moment that the amendments that have been tabled by Ontario Liberals are not beyond amendment themselves. I would urge members to make suggestions. We are obviously very open to that.

We support Bill 30 because the two major hurdles contained in Bill 155 were addressed by this government. For that I have three people to credit: Attorney General David Young did the right thing by getting rid of the J. Edgar Hoover clause that was in this bill's predecessor, Bill 155. I'm going to credit also Dalton McGuinty and Lyn McLeod for their questioning in question period. Why? The government at first refused to accept what Ms McLeod and Mr McGuinty were saying in question period.

On December 12, 2000, the leader of the official opposition asked the Attorney General about the J. Edgar Hoover clause that would permit the Attorney General to collect personal health information without any checks and balances, to which Attorney General Flaherty said, "By virtue of those sections, personal health information is excluded from section 19 of Bill 155. So that personal health information is not available to the Attorney General or any minister pursuant to section 19 of 155."

The leader of the official opposition kept at it. He said, "Here's my reading of the bill and it is pretty clear that there are no such protections."

The Attorney General said to that, "The accusations and the interpretation made by the member opposite are inaccurate." Of course this quote would end up being overturned by his successor.

Lyn McLeod, member for Thunder Bay-Atikokan, on December 13, 2000: "So today I will ask you," Ms McLeod says to the health minister, "What protections are you prepared to put into your bill to make sure that the Attorney General has no legal right to get private health records on suspicion alone?" The health minister was outraged that anybody would question the discretion or judgment of the government. She said, "This is unbelievable, and I'm going to refer it to the Attorney General to answer." The Attorney General said he had told them three times and he invited Ms McLeod and Mr McGuinty to a briefing. Of course, subsequent to that, on February 20, 2001, Attorney General Young announced that the privacy protections would be put in place for personal information, and particularly for personal health information.

With those two major objections removed, we are supporting this bill, subject to a number of concerns that I hope are addressed in our discussion on the amendments. I hope this government for the first time, at least since I've sat on this committee, is open to an amendment from the official opposition, since my experience has been that every amendment we have put forward on a government bill has been ignored and rejected.

**Mr Tilson:** Somehow we've moved from debating section 1 to general statements by the three parties. I suppose that's fine. I would like to make a couple of responses to some of the comments that were made by my friends on the other side.

Mr Kormos got into what he has given us full notice he's going to get into, and that is the debate on the balance of probabilities versus the—in other words, the standard of proof tests. That is dealt with in section 16. I don't know whether he's finished with this debate on that issue. Perhaps, since he has raised it now, I could make a few comments with respect to that. We have had this out before, this debate, with Bill 155. I guess it is fair we could have it out now because obviously the New Democratic caucus feels quite strongly about it. They're entitled to do that.

Just to remind the committee what the government has stated in the House and in this committee in the past, I outline the jurisdictions where the civil test is used; in other words, the test that's being used in Bill 30, specifically section 16. It's been used in Australia since 1960 in a similar type of legislation, in Ireland since 1996, in South Africa since 1998, and in the United States. There is draft legislation before the United Kingdom and the federal state of Australia, where the balance of probabilities test is being used. The NDP doesn't have an amendment with respect to 16, so I assume they'll simply be opposing section 16 when we come to vote on that.

1600

The "beyond a reasonable doubt" test, as we know, is used in criminal proceedings. It's used specifically when you are going to incarcerate someone, or the law suggests you could incarcerate someone. This bill is about property, about seizing the assets in a civil way. I'm not going

to say anything further because we've said it before with respect to debate on Bill 155 and in the House. The NDP has made their position quite clear. I understand that and I hope that will be the end of the debate, although they can move on when we come to section 16.

Mr Bryant got into the topic of terrorism and amendments that were made to Bill 155. Of course the Attorney General came, I think on the opening day that the bill was introduced, and said he was going to be making amendments, particularly to the privacy legislation. I guess Mr Bryant's free to pat his colleagues on the back, and that's OK too if he wishes to do that.

**Mr Bryant:** And him too.

**Mr Tilson:** Sure. I don't have any problem. People can pat anybody on the back. He has asked the question in this debate, which is veering off Bill 30. He may argue it's not. The government has been doing a number of things, in response to Mr Bryant's comment. I think it's fair that the government reiterate on the record what we have done. We have taken swift action since that horror on September 11. For example, to the extent that terrorists engage in unlawful activity to make profits, this bill that is before this committee, Bill 30, will give us the means to seize, freeze and ultimately forfeit the proceeds of unlawful activity, including unlawful profits made by terrorists.

We're providing up to \$3 million to help Ontario victims and Ontario families whose loved ones were victims of the terrorist attacks in the United States. There's a toll-free line with 24-hour access that's still up and running and has been from the very beginning. We have appointed two security advisers. We are undertaking a thorough review of Ontario's emergency response plans. We have introduced legislation to increase security for documents such as birth certificates. That was done by Mr Sterling, I think, last week. We're establishing a special police unit to assist federal officers on tracking down criminal offenders who are in Ontario illegally, and we're aggressively seeking their deportation. Finally the Premier this past week met with New York Governor George Pataki to discuss economic and security issues.

I think it's unfair of the Liberals to say the government is doing nothing. We are doing something. We're doing a lot. I'm not going to get into the battle as to who's better, federal Liberals or provincial Tories. I believe the Premier of Ontario deserves a pat on the back as well, and I trust Mr Bryant will do that.

I emphasize that Bill 30 doesn't just deal with motorcycle gangs and the mafia and organized crime, the typical criminal-type things. If there's illegal activities going on specifically by terrorists, Bill 30 applies to those people as well.

With a comment as to what goes on in the United States, the legislation that's talked about in the state governments, all of that is criminal law amendments. This bill that is before us, which is the bill we have jurisdiction on, deals with the seizure of property. It's the federal government's responsibility to make amendments to the Criminal Code. He knows that. We all know that.



I trust now we can proceed with section 1.

**The Vice-Chair:** Are there any further comments? Shall section 1 carry? Carried.

Section 2: there is a Liberal motion.

**Mr Bryant:** I move that the definition of "unlawful activity" in section 2 of the bill be struck out and the following substituted:

"'unlawful activity' means an act, conspiracy to act, or omission, whether it occurred before or after this part came into force, that is an offence,

"(a) under an act of Canada or Ontario that is listed in the schedule,

"(b) under an act of another province or territory of Canada, if a similar act, conspiracy to act or omission would be an offence under an act of Ontario that is listed in the schedule if it were committed in Ontario,

"(c) under an act of Canada or Ontario not listed in the schedule or under an act of another province or territory of Canada that would be an offence under an act of Ontario not listed in the schedule if it were committed in Ontario, if the offence involves,

"(i) terrorism,

"(ii) threat of violence,

"(iii) possession of a weapon,

"(iv) hateful communications directed at an individual or identifiable group of individuals,

"(v) stalking, besetting or intimidation,

"(vi) causing a person or persons to reasonably fear for their safety, the safety of another person or persons or property,

"(vii) interference with lawful activities or the lawful use of property without reasonable justification, or

"(viii) interference with a computer or telecommunication device without lawful authority,

"(d) under an act of a jurisdiction outside Canada, if a similar act, conspiracy to act or omission would be an offence under an act of Canada or Ontario that is listed in the schedule if it were committed in Ontario, or

"(e) under an act of a jurisdiction outside Canada that would be an offence under an act of Canada or Ontario not listed in the schedule if it were committed in Ontario, if the offence involves any of the activities listed in subclauses (c)(i) to (viii). ('activité illégale')."

C'est tout.

**The Vice-Chair:** Are there any comments on the amendment?

**Mr Bryant:** Do you want me to speak to this first?

At the outset, Mr Tilson said he wants me to give the Premier a pat on the back. I will agree with the Premier of Ontario when he said on September 24 that these kinds of amendments, these kinds of changes need to be made to Bill 30. My chief witness, my big supporter for these amendments—don't take my word for it, take Mike Harris's word for it. He was right on September 24 when he said these changes needed to be made. I don't know what happened and I don't know why the government broke its commitment to bring in these changes. I understand the government is going to take the position that this bill already captures terrorist activities, to which I

say there's no reference in Bill 30 to terrorism or the kind of offences that lead to terrorism.

The purpose of this section is twofold: first, we need to identify the kinds of unlawful activity that trigger these civil remedies. Right now, it says "unlawful activity." Why do we need to do that? I don't want to give a defence lawyer the opportunity to say that the new anti-terrorist omnibus bill not yet passed by Parliament, once those new laws are in place, in fact doesn't apply to Bill 30. Second, I have a concern that the over-breadth inherent in simply triggering the civil remedies upon a finding of unlawful activity is going to have a very practical problem. I believe that it is going to be actually what the provinces do together with the federal government that is going to determine whether we are successful in the war against terrorism at home. By that I mean our federal and provincial governments providing a uniform response to terrorism, contrary to the current situation where there is enormous variance between the amount different provinces spend on prosecuting crimes.

#### 1610

Geographic disparity cannot explain why New Brunswick pays about twice as much on prosecuting crimes as Alberta. We need a uniform response from the provinces. We need the federal and provincial authorities, obviously, to be working together very closely. We have federal powers under the Criminal Code permitting the seizure of unlawful activity right now. That would be prosecuted by provincial crowns. We also have these new civil remedies, which would also be prosecuted by provincial crowns. However, it is not clear to me at all, and it was not clear despite the best efforts by the great lawyers who came before us from the Ministry of the Attorney General, whether this ministry knows who's going to be doing what.

We have to recognize what Professor Margaret Beare said at Osgoode Hall Law School. She is the head of the organized crime department at Osgoode Hall Law School. She said, "Ontario is the province that tends to use the existing Criminal Code provision for powers of seizure less than some of the other provinces." The federal tools are being used less by Ontario than other provinces. There is variance in the amount Ontario is spending on prosecutions versus other provinces. That's not just Ontario; it's all over the map. Have-not provinces are spending, per capita, a lot more than many of the have provinces.

Add to that the civil-criminal conflict that's going to take place. I'll tell you what I'm talking about here. I asked an excellent spokesperson from the Ministry of the Attorney General, Jeffery Simser, "What are we going to do? Are we going to enforce the Criminal Code provisions? Are you going to withdraw your criminal division and install more civil lawyers to enforce your proceeds-of-crime legislation?" Why do I ask that? There's an ADM civil, there's an ADM criminal and there are lawyers who work in different departments. Who does what? Are both going to go after it? Mr Simser said, "My understanding is in fact they're beefing up

their process rather than knocking it down," which would lead to the conclusion that they're budgeting for more criminal and civil crackdowns on organized crime. That doesn't bear out when you look at the budget.

The 2001-02 budget commitment is \$979 million; the 2000-01 budget commitment is \$971 million. That's a 0.8% increase. Inflation is expected to be somewhere around 2.8%. Just on the face of it, there are small cuts to the Ministry of the Attorney General. That doesn't even take into account the fact that all crown counsel have received approximately 30% increase in salary. That's not been accounted for in the 2000-01 budget. They're spending less even though the hope was, and this was a hope that Mr Simser articulated and that I would share, that there would be more of a commitment. There are cuts. That means that if the province of Ontario is already using the federal Criminal Code tools less, it is probably going to be using them even more less, I guess. In turn, I don't know where the money is going to come from to use these civil remedies, because of course if these laws aren't being enforced, then they're rendered a dead letter.

What does that have to do with the amendments? If we focus the offences on which Bill 30 can be used, then we will not have a situation where the Ministry of the Attorney General is using the blanket "unlawful activity" clause to crack down on offences that have nothing to do with organized crime. There is nothing in this bill that stops that wasteful management from taking place. There's no focus on, for example, terrorism. This amendment focuses the tools on terrorism. There's no focus on the types of offences involved in organized crime. That's what section 2 does and that's what the schedule does.

The schedule is pretty broad. I've got 22 federal bills and eight provincial bills to which "unlawful activity" could be applied. It is pretty broad. If you want to add some to the schedule, I would encourage you to do so. If you want to add the types of crimes—threat of violence, possession of a weapon, terrorism and on down—I would urge you to do so. This way we don't have this bill being used to seize assets and profits because of a violation of the beekeepers act.

As we heard during committee hearings, you can do that under this bill; any unlawful activity, any offence. So the example given by Alan Borovoy: if a merchant sells his or her wares contrary to Sunday shopping legislation, they could have all the profits seized—that's going to do nothing for organized crime and it is going to do nothing for terrorism.

The purpose of this section is to focus it, to ensure that we don't clog up the courts with claims having nothing to do with organized crime or terrorism. I trust the prosecutor's discretion on the one hand, but why on earth wouldn't we ensure that prosecutors do not head down the path of a wasteful use of Bill 30, but rather focus their attention on organized crime and terrorism?

Again, I agree with Mr Tilson. The government, yes, has hired a couple of management consultants to advise on security. I'd forgotten about something: Minister Sterling introduced birth control legislation, which would

not have been introduced but for the questions asked by—

**Mr Tilson:** Birth registration.

**Mr Bryant:** What did I say?

**Interjection:** Birth control.

**Mr Bryant:** Dalton McGuinty would not be introducing birth control legislation, would he? Birth certificate legislation, which was—

**Mr Kormos:** They both lead to totalitarianism.

**Mr Bryant:** That's right. That's true enough. Who said committee is boring?

Just for the record, birth control crackdowns are not taking place. It is birth certificate registration. That legislation would not have come about but for the questioning, again, of the leader of the official opposition, Dalton McGuinty. And yes, I will credit Mike Harris for saying that we need changes to Bill 30. Here they are. I hope the government members on the committee will support them.

**Mr Kormos:** I want to speak to this amendment. I have become as fearful of our response to the terrorist attacks of September 11 as I have been of terrorism in general. I do not condemn the Premier for not coming forward with amendments to incorporate an antiterrorism package as part of this bill. Quite frankly, crime is crime. The whole business of organized crime as compared to disorganized crime is a facetious distinction. But the government has been quite clear that it purports or that it plans or that its goal is to attack the mob and biker gangs and white-collar crime of that sophisticated type. They've used illustrations of it.

I regret—and I say this to the Liberal mover of this motion—the inclusion of terrorism in, for instance, this amendment, which in and of itself stands undefined. We only have to think back a few months when a perhaps regrettable and lively action at an MPP's office received some very vocal condemnation and was certainly, if not actually identified as terrorist, equated to terrorist in some of the rhetoric that was used by some of the players. In hindsight, after September 11, it sounds almost trite. That's being dealt with by criminal charges and, who knows, other charges, and is before the courts. A court will make a determination as to whether or not anything illegal was done and, if it was illegal, what disposition there ought to be.

1620

We have witnessed more than a few things develop since September 11, wrapped in the cloak of the fight against terrorism. There are some American legislators finally standing up in Washington, protesting that every new legislative agenda, including—whether this was simply hyperbole on the part of that legislator's part or not—George Bush's tax cuts, is being cloaked in the fight against terrorism. This particular legislator, whom I heard on a radio interview, was saying, "No, you're not going to hoodwink me, you're not going to bushwhack me, with that argument."

In the so-called fight against terrorism—and Mr Bryant refers to the two capos being appointed by Mr



Harris, one Mr Inkster and the other Mr Lewis MacKenzie—we've seen the advocacy of racial and ethnic profiling as part of the effort against terrorism, something I know that people in the various ethnic and minority and visible minority communities have found incredibly terrifying, and others with expertise certainly equal to that of former Major General MacKenzie have cited as being totally ineffective ways to deal with terrorism. Not only do they say that it's dangerous but they say it's dumb. It goes beyond merely being dangerous in terms of the racist identification of individuals or members of certain ethnic communities. Indeed, and some people were sensitive to this in the Legislature, it causes us to reflect that if we employ that type of ethnic racial profiling that Lewis MacKenzie has advocated and that the government, by virtue of his ongoing appointment, appears to have, if not totally adopted, at least condoned—I questioned in the House, in what generation, in which decade, will it be that we apologize once again to yet another group of Canadians, just as Japanese Canadians received an apology far too many years and decades after the fact?

The other capo appointed by Mr Harris was Mr Inkster, who has been far more cautious in his public statements and shown far more political acumen. But a former appointee is still standing. One Norm Gardner, the chair of the Toronto Police Services Board, endorsed and appears to advocate the utilization of police surveillance without giving any qualifications as to what gets somebody on the surveillance list or what gets you off, if indeed you aren't involved in anything illegal.

My suggestion to you is that any act which would be a terrorist act would have to, in and of itself, be a criminal act or an offence against some other statute. The legislation in that respect, the definition, in my view, of "unlawful activity," and the attempt to make it very broad—there was criticism, and Alan Borovoy was one of the critics who came here and used the illustration of the Sunday shop owner, querying whether he should be at risk of losing all of his profits. As I recall, there was one furrier in Toronto who did, for all intents and purposes, lose all of his profits as a result of Sunday shopping prosecution, but that's a different story.

I'm not happy, not comfortable, not pleased, and I appreciate the interest in importing the discussion about the fight against terrorism into this debate. But regrettably—because I usually find myself interested in creative amendments and eager to support them, sometimes knowing full well that they're not going to pass because the government has signalled to its members that it's not going to pass. I have to tell you again, I'm very uncomfortable, I'm not happy at all about flying the flag of anti-terrorism in the context of this debate. Has the government done it? Yes, the government has a number of times, I suppose most recently with its amendments to the Vital Statistics Act, the birth certificate legislation that Norm Sterling put forward. The New Democrats don't support the Liberal motion. They similarly don't support section 2 as it is contained in the bill. Again, this is where I agree wholeheartedly with Mr Bryant in terms

of the overbreadth: the Trespass to Property Act, and any number of the most modest of things that constitute—Highway Traffic Act offences, however bizarre.

Your squeegee kid bill—think about it—by virtue of section 2 could become an activity. If I'm squeegeeing and accumulating whatever—this is silly; this is what Alan Borovoy is trying to illustrate. A squeegee kid who picks up 50 bucks on a really mucky day at the end of University Avenue would fall within the scope of this bill: unlawful activity, *prima facie* against the law, I suppose, until we see the progress of the challenges to the squeegee bill in the courts—*prima facie* illegal. Is the government serious that it wants to dedicate resources, or even contemplate dedicating resources, to seizing the assets of a homeless kid or adult who is a street panhandler? I think not. I would hope not. But it appears, by their adamancy about and their ongoing support for section 2, that's the way the law reads.

I understand what Mr Bryant is trying to do. I regret that I cannot agree with him and will not be supporting the amendment in that regard. At the same time, I won't be supporting section 2 when we get around to that. Sorry, Mr Tilson, I didn't want to leave you all broken up.

**Mr Tilson:** We are getting back to the good old days where we have three different views. It's good to hear.

The debate seems to be moving a lot into dealing with the September 11 horror. That may be appropriate, this being part of one of the many things the government is looking at. But we've got to remember, of course, that this philosophy was around a long time before September 11. It was around in Bill 155. We had substantial public hearings here. We've had debate in the House. It goes beyond terrorism but, certainly, as I've indicated before, it applies to terrorism. Having said that, I'd like specifically to look at the amendment, which is a much more narrow philosophy than the government's philosophy, which is certainly broader. The existing definition of unlawful activity is broad. It is designed not only to deal with offences within Ontario but within Canada and in fact with property that has migrated to Ontario from another jurisdiction outside of Canada—it could be another province, it could be another country—where there are similar offences.

The Ontario government doesn't want to become a haven for offshore proceeds of unlawful activity. The government's definition, which is why the government will be opposing the proposed amendment, is carefully prepared so that Bill 30 doesn't cover breaches of the law in other jurisdictions which are not breaches of the law in Ontario. That's the philosophy of the government's definition of unlawful activity.

We believe that Bill 30, as we've stated, creates civil remedies to address unlawful activity. In particular, we want to compensate and assist victims. We've got to keep remembering that that's one of the major reasons we are doing all this: to assist and compensate victims.

**1630**

This motion of Mr Bryant's proposes a fixed definition, a static definition, of "unlawful activity." It's what

is in the schedules that he has attached. Those who undertake unlawful activity for profit—we've seen it in the courts—are always looking for loopholes in the law. We believe this motion creates a number of loopholes.

The list is not complete. For example, it doesn't include, returning to the topic of terrorism, which specifically Mr Bryant has been bringing up, the United Nations Act. It's federal legislation. The United Nations Act was used by the federal government to freeze the accounts of terrorists in the aftermath of September 11. It doesn't include that piece of legislation. So Bill 30, if the amendment were to carry, would not apply to proceeds in that situation. The challenge of the static list is that it makes it impossible to anticipate the loopholes, which I believe—I'm sure we all agree—the bad guys are always trying to exploit. You have to try to anticipate. If you have a set of laws in a schedule that you're following to a T, what about future laws that are going to be introduced by the federal government, that are going to be introduced by the provincial government? Who would have thought—

**Mr Bryant:** Read the section.

**Mr Tilson:** I am reading the section.

The Internet—who would have thought 20 years ago of the role the Internet plays? I guess you can say this schedule is fine now, but is it going to be fine five years from now? Is it going to be fine 10 years from now, or are we going to have to come back to the House and amend the schedule?

For those reasons—and there were some comments made about funding. I disagree with that. I could outline what we have done with the 2000 budget to challenge those comments, but perhaps we could proceed on other sections.

**The Vice-Chair:** Are there any further comments?

Seeing none, I'll put the question on the amendment. Shall the amendment moved by Mr Bryant carry?

#### Ayes

Bryant, McLeod.

#### Nays

Beaubien, Hastings, Kormos, Ouellette, Tilson.

**The Vice-Chair:** The amendment is defeated.

We'll be proceeding now with section 2. Any comments on section 2?

**Mr Kormos:** As I indicated in my comments on Mr Bryant's amendment, section 2 remains unacceptable. It's overly broad.

I understand Mr Tilson's explanation, but that's exactly the point. This bill sets up the incredible resources that the state can muster against, conceivably, one little person. Again, if it was only guilty people who got arrested, if there could be an assurance of that, we'd probably have a far different view. If there was somehow some sort of mystical, magical way that only guilty people who definitely committed those offences got arrested,

we'd probably have a far different view about process in the criminal system. If we knew that it was only going to be the most despicable of big-time drug traffickers—Howard Hampton had some very astute things to say on this when he reflected on the American experience.

Who gets targeted in these schemes? That's no discredit, I suppose, to the scheme itself, assuming that there's an adequate standard of proof that the state has to bear. But it is not the big guys. It is not the cocaine baron with his or her mansion in the hills of Cali or Medellín; it is the dumb dealer in any number of communities in the province, who may have made some significant money; no two ways about it. That's one of the big motivators for selling dope. But it is the little people out there in the total scheme of things, the seizure of whose assets doesn't even begin to make a dent in what I concede has been some incredible wealth generated, let's say, with dope and drug marketing in and of itself.

It is of little comfort for the parliamentary assistant to talk about the need not to be overly restrictive and the need maybe to have to come back to this legislation five years down the road when in the course of what he wants this bill to implicate in terms of who's eligible for having their personal property or chattels seized is somebody whose illegal conduct could be as obscure as, literally, a jaywalking ticket, a violation of the Highway Traffic Act, crossing the road against a red light or a stop sign.

That is not very comforting when you maintain the low standard of the mere civil balance of probabilities and when you're talking about the prospect of the state using all of the huge number of resources available to it to focus in on and target one tiny little person for whom the connection, the nexus, between himself or herself and this bill is literally a Highway Traffic Act violation. That's the foundation, that's the starting point—and a Highway Traffic Act violation that doesn't even have to be proved in a provincial offences court, because there needn't have been a charge laid to trigger proceedings under this bill.

New Democrats do not support section 2. We've relied very much on the astute comments made by Alan Borovoy, from the Canadian Civil Liberties Association. I refer specifically to his comments. His criticism in reference to this bill states,

"It defines 'unlawful activity' as any offence against any federal or provincial statute. Do you really wish, for example, to be able to seize the profits of a merchant who stays open in violation of Sunday closing laws? The bill would enable you to do precisely that. In our view, there is no excuse for an overbroad definition of that kind. The definition of 'unlawful activity' for these purposes should be confined to the most serious offences associated with organized crime and not just open it up to anything."

We accept Alan Borovoy's observations with respect to section 2 and other sections which similarly define unlawful activity. I join with them. They are valuable comments. His observations guide us in our firm position in opposition because of the dramatic, overbroad definition of unlawful activity in section 2.



**Mr Tilson:** We've had this debate out in the past too. That is the position of the Canadian Civil Liberties Association. We don't accept any level of unlawful activity. I guess I can only remind members of the committee that whether it is Sunday shopping or Bill 30, the Attorney General brings a proceeding. The court—and I hope we all have confidence in the court—has got to approve every step that the Attorney General takes. The Attorney General just can't come in and do this or that; they've got to go to the court and they've got to get approval to do things. That's all laid out.

That's the answer that we gave to the civil liberties association. It may not be acceptable, but we believe it is. We believe that the court can say no to the Attorney General if it's clearly not in the interests of justice, and that's what the section in the bill says. I won't add anything further, because we've got a lot of ground to cover.

1640

**The Vice-Chair:** Any other comments?

**Mr Bryant:** Yes. I just want to say, with respect to section 2, this is an opportunity for the government. I understand that the optics of supporting a Liberal amendment, I guess, are beyond the pale for this government, but we will not support section 2, for the simple reason that we want the government to go back and take a closer look at the unlawful activity section. I'm not going to repeat my arguments with respect to the amendments. I'll have an opportunity to address some of Mr Tilson's comments in subsequent sections. Now is the time to get this section right, and now is the time to make sure this section applies to terrorism and doesn't apply to the beekeepers' act, so that, fine, we can trust a judge to come up with the right resolution. But that's a big waste of the Ministry of the Attorney General's money, to roll that dice.

**The Vice-Chair:** I'll put the question now on section 2.

**Mr Kormos:** A recorded vote, please.

**The Vice-Chair:** A recorded vote.

#### Ayes

Beaubien, Ouellette, Tilson.

#### Nays

Bryant, Kormos, McLeod.

**The Vice-Chair:** I think this will require the Chair to vote.

**Mr Kormos:** May I speak to that, please?

**The Vice-Chair:** I think we are in the process of voting.

**Mr Kormos:** There is precedent. I'd ask that the Chair avail itself of that precedent.

**The Vice-Chair:** I am aware of the precedent.

**Mr Kormos:** You are now.

**The Vice-Chair:** I had actually reviewed the precedent before, with the clerks.

**Mr Kormos:** Unless the Chair wants to demonstrate courage rarely seen—

**Mr Tilson:** Mr Chair, we're in the middle of a vote.

**The Vice-Chair:** The Chair votes yes, to carry the section.

On sections 3 to 6, there appear to be no amendments. Can we deal with sections 3 to 6 together?

**Mr Kormos:** One moment, Chair.

**The Vice-Chair:** Is that OK? Any comments on section 3 to section 6?

Seeing none, shall sections 3 to 6 carry? Carried.

Section 7: are there any amendments on section 7?

**Mr Bryant:** On subsection 7(1), I move that the definition of "unlawful activity" in subsection 7(1) of the bill be struck out and the following substituted:

"'unlawful activity' means an act, conspiracy to act or omission, whether it occurred before or after this part came into force, that is an offence,

"(a) under an act of Canada or Ontario that is listed in the schedule,

"(b) under an act of another province or territory of Canada, if a similar act, conspiracy to act or omission would be an offence under an act of Ontario that is listed in the schedule if it were committed in Ontario,

"(c) under an act of Canada or Ontario not listed in the schedule or under an act of another province or territory of Canada that would be an offence under an act of Ontario not listed in the schedule if it were committed in Ontario, if the offence involves,

"(i) terrorism,

"(ii) threat of violence,

"(iii) possession of a weapon,

"(iv) hateful communications directed at an individual or identifiable group of individuals,

"(v) stalking, besetting or intimidation,

"(vi) causing a person or persons to reasonably fear for their safety, the safety of another person or persons or property,

"(vii) interference with lawful activities or the lawful use of property without reasonable justification, or

"(viii) interference with a computer or telecommunication device without lawful authority,

"(d) under an act of a jurisdiction outside Canada, if a similar act, conspiracy to act or omission would be an offence under an act of Canada or Ontario that is listed in the schedule if it were committed in Ontario, or

"(e) under an act of a jurisdiction outside Canada that would be an offence under an act of Canada or Ontario not listed in the schedule if it were committed in Ontario, if the offence involves any of the activities listed in subclauses (c)(i) to (viii). ('activité illégale')"

**Mr Jerry J. Ouellette (Oshawa):** On a point of order, Mr Chair: Is this motion valid, as we have already defeated the motion in section 2 whereby it requires each section to have the same information throughout the bill?

**Mr Kormos:** Lawyers love bills that don't have compatible sections. Where did you read that?

**The Vice-Chair:** I understand from legislative counsel that it is a valid motion.

**Mr Bryant:** Notwithstanding the efforts to gag my speech by that great civil libertarian Jerry Ouellette, let me say that I am not going to repeat the same arguments as before with respect to the other section. They apply *mutatis mutandis* to this one, but this is another chance for the government to reconsider.

I want to respond to what Mr Tilson said. He said, "What about the schedule? It's not exhaustive. Maybe the UN bill would not apply," to which I suggest to the members, read the full section. Besides the schedule, there are also sections (c), (d) and (e), which set out types of offences which are obviously analogous to the crimes and offences found in the schedule. In particular, the suggestion was that extraterritorial crimes, in other words crimes committed outside of Canada, which right now might be prosecuted under the legislation omitted from the schedule, could not be prosecuted under Bill 30. That's just not accurate, because (e) specifically deals with offences outside Canada.

Lastly, if the government has additional laws which it wants to add to the schedule, as I said in my opening comments, I would love to add additional matters to the schedule. Yes, getting legislation focused requires some hard work, and of course it's easy to come up with a blanket term and have it apply to everything. Yes, the Liberal amendment would be more focused, but it would also avoid the creation of a patchwork of laws across this country whereby you would have Ontario crowns pursuing civil remedies against the retailer selling his wares contrary to Sunday shopping laws, violations of the beekeepers' act, to which Mr Tilson says, "Well, that's OK. A judge will fix that." A judge will fix that, but given that the Ministry of the Attorney General has less to spend now than they did before and will need to spend more in order to cover off these new civil remedies, I say let's get this bill focused on organized crime and terrorism and not on these other activities that have nothing to do with organized crime and terrorism. I'm concerned that you'll have some provinces going after some remedies, the Ministry of the Attorney General civil office going after one remedy when the criminal office might think that that not happen, and we still have not got any clarification on that point.

Lastly, again, if there is a way in which this section, which is itself extremely broad, the amendment that is—so broad that my friend Mr Kormos cannot support it, notwithstanding his desire to support creative amendments. It's too broad for Kormos. I'm saying that "unlawful activity" in and of itself does not do justice to what this bill is trying to do, and I would urge members to reconsider the arguments made by Mr Tilson, which in fact don't apply if you actually read the section, which I know is asking a lot maybe, but you've had it since Friday. You can bring in offences not in the schedule under this new amendment. C'est tout.

1650

**Mr Kormos:** Because this is the identical amendment to what we debated a few moments ago—

**Mr Bryant:** Right.

**Mr Kormos:** —I made it clear that I welcome the effort to restrict the overbreadth of the bill as it is in section 2 that was criticized by Mr Borovoy. I also indicated I found the inclusion of terrorism as one of the objectives to be very regrettable from my point of view, and that's again not to say that anybody shouldn't be joining in the fight against terrorism, but it's an un-defined word.

One could argue that it's obvious when terrorism is terrorism. I would respond that it wasn't obvious before September 11, because the attack on the World Trade Center was not anticipated; at least it wasn't part of the North American experience vis-à-vis terrorism, indeed even internationally. I suspect it stands alone and unprecedented in history in terms of the height of the level of devastation and the number of people killed in, candidly, what amounted to such a low-tech way. Perhaps our anticipations were far more science fiction-dictated regarding where we in prosperous North America might find ourselves vulnerable.

My position is that the language included here has nothing to do with participating or co-operating in the goals of the bill. Once again, I want to make it very clear that New Democrats are quite eager to agree and work on schema that take money away from organized crime, take their assets away. We say the way to do it is to utilize the Criminal Code and its standard of proof beyond a reasonable doubt to safeguard innocent people. We say the way to do it is by adopting, as Alan Borovoy suggested, a clear set of offences which are the more serious offences and, as he put it, those offences most frequently associated with organized crime, again so that there's some focus to the bill.

Let me, please, put into context what it means now to bandy about the word "terrorism." I'll be very brief, and I put this as an illustration, especially in the context of the anticipated federal amendments to the Criminal Code, which every person appears to agree are some pretty draconian measures, some pretty thorough encroachments on long-held senses of civil liberties, civil freedoms.

One of the conditions that September 11 has created is the opportunity to simply target people and say, "Oh, I don't like the way my neighbour sounded last night, speaking a language other than my own. I think I should report them. They might be terrorists." There's a climate that facilitates that. Is it accurate to say, "Oh, nobody would do that"? Well, no, we've witnessed some pretty atrocious conduct on the part of, yes, Ontarians, including people in other jurisdictions in North America, against any number of religious places, against any number of people of certain ethnic and cultural and racial backgrounds.

Chair, I think you know that I was on, effectively, a human rights tour of Colombia in August. Last week, Diane Francis condemned the group that went there, under the name of the Canada-Colombia Solidarity Campaign—Minga, which is an aboriginal word—condemned



us all in one fell swoop as being fronts for terrorist organizations. I reject that entirely and am prepared to engage in the debate with her on that. But when that happened, when you see a newspaper columnist in the *National Post* in the climate of what we are enduring post-September 11 in the prospect of some very draconian Criminal Code changes, some incredibly draconian Criminal Code changes, it illustrates how easy it is and how careful we should be about tossing around the label “terrorist” or talking about what constitutes or doesn’t constitute terrorist activity.

I don’t believe that the addition of “terrorism” here as a qualifier adds anything, either in terms of giving the bill more focus, which is one thing I would want out of an amendment to section 2, or in making the bill more specific. My fear is that it again responds to the climate that we’re in currently, and it does so in a way that rather than being cautious about whom we point the finger at and whom we target, it shows, in my view, a lack of caution. That may not have been its intent, but it shows a lack of caution. However romantic it is to rally around the forces of good, and however valid the pursuit of stamping out terrorism is, and I think everybody agrees to that fundamental proposition, we’ve got to be very, very careful about what type of—what does the military call it?—collateral damage is left along the wayside. We’ve already seen some of that collateral damage in our own communities here in southern Ontario, and we’ve heard reports of it from other jurisdictions in North America. I tell you, that collateral damage is as frightening, and the victimization of people in that context is as frightening, as the terrorism itself. That’s where terrorism has taken us, where we no longer have to be merely afraid of the terrorists, whoever they might be at any given point in history, but we have to be afraid of our neighbours too, because they can turn us in or mis-identify us, or identify us out of malice or out of pure ignorance. Our places of worship can be subject to physical attack, or our spouses because they wear head coverings.

I’ve spoken with Muslim women who are now afraid to come out of their homes in Toronto because of the reaction they get for wearing traditional head coverings. As Muslims in Toronto, they’re afraid to come out of their homes. Look what the terrorists have done to us. If that is what they are in fact doing to us, then the impact of that terrorist attack is far beyond the initial huge and unfathomable tragedy of 6,000 slaughtered in one brief moment. My concern is that we are being lured by the magnetic draw of that whole matter into turf in this bill that, as I say, I find at the very least regrettable.

I cannot support this amendment, again, for the same reasons as last time.

**Mr Tilson:** The government will be opposing this amendment as well. I won’t add to what I said with respect to the first motion, other than to respond to the comment that the way the government’s phraseology is prepared will create a patchwork application across the country. I’d like to respond to that. As we know, Ontario is the only jurisdiction in the country that has this type of

legislation, or its equivalent. We’re not creating the wheel here; we’re not reinventing the wheel. I indicated the different jurisdictions, whether it be Ireland, whether it be Australia, whether it be South Africa—the legislation being passed there is similar. I simply can’t accept the comment that it will be patchwork legislation.

Really, to be fair, in any form of legislation, the government of Ontario has the right to be tougher than another province; it has the right to be more compassionate than another province. The situations may differ from province to province, or they may just choose for philosophical reasons to be tougher or more—I’m trying to think of something softer, another word. They have that right.

I won’t repeat the arguments we made with respect to the first motion. They apply to motion number 2 as well.

**The Vice-Chair:** If there are no further comments, I’ll put the question on the amendment.

Mr Bryant has moved an amendment to subsection 7(1). Shall the amendment carry? The amendment is defeated.

**Mr Bryant:** Recorded vote.

**The Vice-Chair:** I think you have to ask for a recorded vote before I put the question.

**Mr Bryant:** I guess you didn’t hear me. I did ask for a recorded vote. I always do. Mr Kormos taught me. I’ll speak up next time.

**The Vice-Chair:** Let’s have a recorded vote.

**Mr Kormos:** Chair, sometimes it’s difficult, and different Chairs, quite frankly, adopt different styles as to when they expect—because the rules, if you’ve read them, as I have, are a little ambiguous about the point at which one calls for a recorded vote. There have been a couple of interpretations over the course of many years here.

1700

**The Vice-Chair:** Thank you, Mr Kormos. We’ll have a recorded vote on it.

#### Ayes

Bryant, McLeod.

#### Nays

Beaubien, Hastings, Kormos, Ouellette, Tilson.

**The Vice-Chair:** The amendment is defeated.

Now we will deal with section 7. Are there any further comments? I will put the question then. It’s a recorded vote.

#### Ayes

Beaubien, Hastings, Ouellette, Tilson.

#### Nays

Bryant, Kormos, McLeod.

**The Vice-Chair:** Carried.

Sections 8 to 12: there are no amendments. Is it the pleasure of the committee that we deal with those sections together? Agreed?

**Mr Kormos:** Eight to 12, exclusive of 12.

**Mr Tilson:** Eight to 11 inclusive.

**Mr Kormos:** There is an amendment to 12.

**The Vice-Chair:** That's correct. Sections 8 to 11. Are there any comments on those sections?

Seeing none, shall sections 8 to 11 carry? Carried.

Section 12: there is a Liberal motion.

**Mr Bryant:** I move that the definition of "unlawful activity" in section 12 of the bill be struck out and the following substituted—I don't know if it is appropriate to dispense with the remainder.

**Mr Ouellette:** Dispense.

**Mr Bryant:** Do I need to read it?

**The Vice-Chair:** If there is unanimous consent, we can dispense.

**Mr Bryant:** In terms of my comments, we've spoken to this and I do have a different set of concerns with respect to subsection 13(4.1), but I think we've already addressed the unlawful activity amendments.

**The Vice-Chair:** If there are no further comments on the amendment, would you require a recorded vote?

**Mr Bryant:** Oh, yes. Thank you.

#### Ayes

Bryant, McLeod.

#### Nays

Beaubien, Hastings, Kormos, Ouellette, Tilson.

**The Vice-Chair:** The amendment is defeated.

Are there any comments on section 12?

Seeing none, shall section 12 carry?

**Mr Kormos:** Recorded vote.

#### Ayes

Beaubien, Hastings, Ouellette, Tilson.

#### Nays

Bryant, Kormos, McLeod.

**The Vice-Chair:** Section 12 carries.

There is a Liberal amendment to section 13.

**Mr Bryant:** I move that section 13 of the bill be amended by adding the following subsection:

"Same

"(4.1) An order made under subsection (1) shall impose a penalty,

"(a) that acts as a denunciation of the unlawful activity;

"(b) that acts as a general deterrent against committing offences;

"(c) that provides reparations for the injuries to the victims and to the public that resulted from the unlawful activity;

"(d) that promotes a sense of responsibility in the parties to the conspiracy and an acknowledgement by them of the injuries to the victims and to the public that resulted or would be likely to result from the unlawful activity; and

"(e) that is proportionate to the unlawful activity by taking into consideration,

"(i) the injury to the victims and to the public that resulted or would be likely to result from the unlawful activity,

"(ii) the gravity of the offence that constituted the unlawful activity, and

"(iii) the degree of responsibility of each party to the conspiracy against whom the order is made."

**The Vice-Chair:** Are there any comments on this amendment?

**Mr Bryant:** This section attempts to ensure that there is proportionality and that the appropriate considerations are made with respect to an order under section 13. Why am I concerned about proportionality? As I said, once the J. Edgar Hoover clause was removed from Bill 155 under the new Bill 30, the official opposition supports this bill. I want this bill to stand the test of time. We heard from the Advocates' Society and from Mr Borovoy, who did not make any blanket condemnations against the bill in terms of its being upheld to charter scrutiny, but rather raised some very specific concerns, one with respect to federalism and whether there was perhaps a conflict between what the Criminal Code provisions were doing and what this provision is doing.

It probably can withstand that federal scrutiny under the Constitution Act, 1867. It would have been nice, with all due respect, to hear from Mr Tilson, either before or during that debate, so that we could have talked about the analogous cases where the provinces were basically also entering federal territory, one of the strongest analogies being the area of drunk driving. Provincial and federal governments both legislate in the area, and it seems sometimes that the penalties conflict, but the courts have tended to uphold it. Still, the Advocates' Society did raise concerns about that.

Secondly, proportionality under the charter—again, the concern would be that a violation of the beekeepers' act would result in the seizure of somebody's home, which nobody here would support for a moment. I know that the response of the government is, "Well, a judge wouldn't allow that," to which I say, of course, but why would we not put forth standard proportionality tests in this bill? Does it mean a little bit more work for legislators? Yes, it does. It does mean a little bit more work. But it also means that it has a better chance of standing the test of time and that we don't have an instance where law enforcement officials or prosecutors are pursuing a case in a way we don't want it to be pursued.

We want a proportional use of the Attorney General's resources and the Solicitor General's resources to crack



down on organized crime and to use Bill 30 to crack down on terrorism and organized crime because that's the purpose of this bill. We don't want it to be cracking down on the beekeepers' act or the Sunday shopping laws. That's what we want. But unless you put that in the legislation in some fashion, both through defining of unlawful activity on the one hand and ensuring that a just order under this bill is proportional on the other hand, then you run that risk. We aren't judges here, but we can tell the courts what the parameters of a proportional order are.

This becomes particularly important when we consider that we want to send a signal to law enforcement officials, to the Ministry of the Solicitor General and to the Attorney General's office that only certain kinds of activities are going to warrant Bill 30 remedies to target organized crime. That's the purpose of this section on proportionality. Why am I concerned about that? We heard from people involved in prosecuting organized crime; in particular, Roddy Allan, principal at Kroll Lindquist Avey, a forensic accounting firm. On February 20, he said: "It has to be kept in mind that linking property with an unlawful activity can be a difficult and costly task, one which police are not going to take on unless they are given the resources. Organized crime makes use of sophisticated expertise. Police will need training and access to costly outside experts. Victim compensation and support of police are two obvious applications of seized assets."

1710

Vaughn Collins, deputy commissioner, speaking for the Ontario Provincial Police, said, "The cost to the OPP of dealing with organized crime and, in particular, of enforcing this new statute"—he of course meant bill—"will have to be met."

We don't want fishing expeditions to be undertaken. How do we ensure that? Because I know that's what we want. We craft language, and again I invite members of the government and the third party to come up with any amendments they wish which can assist in making this section more charter-proof, more federalist-challenge-proof and ensure that the resources are directed in the proper direction, particularly given earlier comments with respect to the use of the federal tools made by Professor Margaret Beare.

Let me close by just making reference to the debate we're having on the patchwork of laws. Again, this particular amendment speaks to it as well.

I could not agree more that to some extent provinces have been referred to as "laboratories of democracy." Provinces can lead in some areas, and lead the nation in terms of tools or policies, and other provincial governments or sometimes the national government follow. But fighting terrorism is going to be difficult under our current system of federalism because we cannot have a patchwork of laws. Why? Because the terrorists will just move to wherever it's friendly. Does that mean that we just put tools down and not lead the country? Absolutely not. I'm not suggesting that.

However, if we don't have proportionality, if we don't have all of our resources going toward the fighting of organized crime and terrorism in the prosecution of this bill, then we are going to have situations where the federal crown in one province is going to be pursuing the Criminal Code seizure-of-assets test, whereas the Ontario government's going to go its own way and not do so.

Ordinarily that's OK, because there is variable prosecution in different provinces and there are different levels of resources expended and some governments are, to paraphrase Mr Tilson, tougher on crime, if you like, than others. However, the war against terrorism on an international level involves a multilateral effort; so does it involve a multilateral effort here at home, which is going to require the provincial and federal justice ministers to work together like they have never worked together before, and I include the Solicitor General in that regard.

I'm not suggesting that Ontario cannot lead, but we have to ensure that this law is being used for its purpose and not for other purposes, lest the scarce resources in the Ministry of the Attorney General be directed toward prosecutions that we don't think are the purpose of Bill 30.

**Mr Kormos:** This is a very interesting amendment. Once again, Mr Borovoy, when he appeared in front of this committee with respect to this bill's predecessor—and I suppose a wink is as good as a nod, because he both winked and nodded to us—said that, "Since the federal Criminal Code already contains provisions very similar to the ones at issue here, there are of course some serious constitutional questions as to whether the province has the jurisdiction to enact the bill at issue." He then went on to say, basically, "Excuse me, but we're not mandated to talk on constitutionality so I'll speak no further, but I trust you've heard what I've said."

This amendment, and I'm looking at the language, "shall impose a penalty." It's mandatory, and it's defined as a penalty. Then it uses two of what I understand to be historic and traditional sentencing guidelines applicable in criminal law, "denunciation" and "general deterrent," and then incorporates—although this isn't exclusive to criminal law—proportionality, but it's an inherent of classic sentencing. If this bill were in dubious positioning vis-à-vis its constitutionality, with all due respect, this amendment would clearly create a quasi-criminal statute out of it.

**Mr Bryant:** Now for sure Ouellette's going to support it.

**Mr Kormos:** That will be interesting then, won't it, Mr Bryant? But do you understand what I'm saying?

**Mr Bryant:** Oh, I understand.

**Mr Kormos:** It's very interesting. I understand what you're saying, but holy moly, with this amendment you've driven this right into the turf of what I see is exclusive criminal jurisdiction. You may be wanting to equate penalty with, let's say, the concept of punitive damages, and you'd understand more about that than I would because I have no expertise in that area of law.



But when the penalty talks about a penalty that acts as denunciation and general deterrence, you then take it beyond the mere scope of what I understand to be punitive damages in the civil sense.

I think this again a most interesting amendment. I understand your injection of proportionality is quite appropriate, because there you're being restrictive in terms of what you're saying the judge can do, and that he has to be proportionate to the evil, I suppose, or whatever the language is that's being dealt with.

Clause (d) is almost whimsical, I suspect. We're supposed to be talking about organized crime here, not youth intervention services. You've got clause (d) that promotes a sense of responsibility in the parties to the conspiracy. What? You're going to get the big, super capo di tutti capi drug dealers and all of a sudden you're going to overwhelm them with their sense of responsibility to the community and they can say they're sorry and they didn't mean to import all that cocaine and get all those Toronto teenagers eating ecstasy at raves? It just seems out of place here and, if anything, it detracts from the message of the bill. The government has been trying to say this bill is all about the big bad guys, right? And that's how they dismiss—they say, "Don't worry. The courts will make sure that the people who have been contemplated, either innocent victims or tiny little players, won't be caught up in the sweep," and they've tried to assure us of the courts' role. So (d) is just, I suppose, interesting.

What I'm saying to you, with respect, is the bill isn't made any better by your amendment. I don't believe it is. I just can't see myself supporting it without some—I'd like to hear what the parliamentary assistant has to say. I'd be more excited about what the staff have to say about the amendment. I suppose perhaps we could put it to the staff. They've had the amendment since Friday. Because if I'm dead wrong on the constitutionality and the importation of criminal standards, say so, but is there any concern among the staff and from Mr Tilson—I of course want to hear what he has to say, because I trust his judgment in so many things legal.

**Mr Tilson:** Indeed. If the committee wants to hear from the staff, I'm quite prepared to make them available. I will say that from the government side we agree on what you're saying—well, almost everything that you're saying—that penalties are consistent with criminal law processes.

**Mr Kormos:** The nationalization of the big banks wasn't part of the agreement, I take it.

**Mr Tilson:** Right. Certainly, penalties are consistent with criminal law purposes. I'm not going to repeat your argument, because that aspect of your presentation I agree with and I think we're getting into the realm of criminal law.

**Mr Kormos:** As if you weren't in there far enough with the bill itself.

**Mr Tilson:** I'm not going to go that far in agreeing with you, Mr Kormos, but I am going to say that your reason for opposing it is quite legitimate. Now, if you still want to have members of the staff come, Mr Simser,

who spoke to the committee before, is here. Would you like him to—

**Mr Kormos:** He's a really smart guy.

**Mr Tilson:** Indeed. Maybe you could identify yourself again, Mr Simser.

**Mr Jeff Simser:** Sure. I'm Jeff Simser. I'm a legal director in the Ministry of the Attorney General. As I understand your question, to have a section that introduces the word "penalty," while no one can ever definitively give a constitutional opinion from this particular chair and this particular microphone, I think is problematic. When we think about civil remedies, we think about damages, we think about punitive damages, we think about orders, but to talk about penalties and about purposes like denunciation and so on and so forth in a section like this is constitutionally problematic.

1720

**Mr Bryant:** Could I ask a question? Are you saying that the section as it now stands, without any proportionality test whatsoever or anything within this bill, is not problematic at all in terms of its constitutional status?

**Mr Simser:** The section actually does have a provision that will allow a court to make a decision on proportionality when it reviews. What 13(1) says is, "In a proceeding commenced by the Attorney General, the Superior Court of Justice may make any order that the court considers just." So if the Attorney General were asking the court to make a disproportionate order, presumably the court could find that that was not just and could refuse on that basis without getting into any of the specific elements of the proceeding.

**Mr Bryant:** But I just want to ask you, though—here you've come forward and questioned the constitutional status of the amendment with all the caveats that you provided. You made that statement. Does the same hold, in your opinion, for the bill itself? You said that this amendment is problematic. Does Bill 30 not have some provisions in it that are themselves problematic vis-à-vis the Constitution Act, 1867?

**Mr Simser:** We take the view that it doesn't. We take the view that this is a proper way to deal with property and civil rights, which is a proper head of power. We take the view that throughout the statute there are safeguards where a court may refuse to issue an order, where for example it is clearly not in the interests of justice. In other words, you could have the Attorney General making every single element of a proceeds proceeding, but because it is a de minimis proceeding, the court could still refuse to make the order even if technically the Attorney General were there. We think that the right safeguards are there in the bill. I think Mr Tilson has referred before to the other jurisdictions. These same arguments have gone on in courts in other jurisdictions, particularly in Ireland. While the argument isn't about 91 and 92, it comes to the same argument because the state is asking in those courtrooms to apply the civil standard, and the defence is saying, "No, you ought to apply a criminal standard." The courts have said,



"No, the civil standard is appropriate to deal with property in these kinds of provisions."

**Mr Bryant:** There are, presumably, in other statutes in Ontario efforts to make remedies defined as more than just being "just" but also to include some element of a test of proportionality. Such bills are out there, are they not?

**Mr Simser:** I'm not sure that I totally understand your question.

**Mr Bryant:** Would this be the first time an Ontario bill ever considered circumscribing what a "just" order is to a court?

**Mr Simser:** I'm not sure, to be honest with you.

**Mr Bryant:** I appreciate that, Mr Simser, Mr Tilson and Mr Kormos. If the government, which has had this section for the weekend and/or if Mr Kormos, who has had it for the weekend, wishes to move amendments to this amendment, I'm obviously very open to that.

**Vice-Chair:** If there are no more comments on the amendment I'll put the question.

**Mr Bryant:** Recorded vote.

#### Ayes

Bryant, McLeod.

#### Nays

Beaubien, Hastings, Ouellette, Tilson.

**Vice-Chair:** The amendment is defeated.

Now we are dealing with section 13. Are there any comments?

**Mr Bryant:** Just to say we don't support this section for the simple reason that—with respect, I want to agree to disagree, Mr Tilson—to suggest that there is any element of proportionality under section 13 I think is inaccurate. To say that describing an order as a just order will miraculously turn it into a proportionate order has an air of unreality to it, and that further effort to circumscribe the proportionality could have been undertaken. It was undertaken by the Ontario Liberals. That was rejected by the government and the NDP without any remedy put forward to the contrary. So we will not be supporting section 13 as it stands.

**Vice-Chair:** I'll now put the question on section 13. Shall section 13 carry? Carried.

There are no amendments to section 14.

**Mr Kormos:** Sections 14 and 15 can be dealt with, Chair.

**Vice-Chair:** All right. Shall we deal with sections 14 and 15 together? Are there any comments on those sections? Shall sections 14 and 15 carry? Carried.

Section 16: are there any comments on section 16?

**Mr Kormos:** As Mr Tilson anticipated and indicated, this is very much the crux of the issue, or at least one of the bigger cruxes of one of the bigger issues around the bill, and that is the utilization of the balance of probabilities. I remind this committee once again of the comments

made by Alan Borovoy from the Canadian Civil Liberties Association, observations and analysis on his part that I accept, that I value, that I'm grateful for and that I join with. Mind you, he did say initially that there is very little in this bill that's worthy of enactment. I accept that as well. But he very specifically spoke to, as his first focused criticism, the matter of the standard of proof, the balance of probabilities versus the criminal standard of proof beyond a reasonable doubt.

Look, how much of even recent history do we have to revisit from our own criminal justice system to understand that even with that high standard of proof beyond a reasonable doubt, there are more than a few now well celebrated and notorious bad convictions that have been exposed? In view of those having been exposed, all of them very serious convictions, how many lesser faulty convictions are there that haven't been exposed because they haven't attracted the same attention by lawyers, by advocates, by the media and so on?

Notwithstanding that, proof beyond a reasonable doubt is a significantly higher standard. It is what we use to convict people of criminal offences. We are talking about criminal activity here. We are talking about criminal activity as a basis on which to take people's assets from them, their property, things they own: their homes, their bank accounts. As Mr Borovoy points out, literally, there are no exceptions here to what can be seized: their library, their books, their clothes. Mr Borovoy said, "What is not acceptable, in our view, is, as between alleged perpetrators and alleged victims, for the power and the resources of the state to be marshalled against one in favour of the other on the basis of a judgment made at the political level, and then for the state to have to do nothing more than prove its case on a balance of probabilities." Again, I value that commentary by Alan Borovoy and the Canadian Civil Liberties Association.

#### 1730

I understand those who would criticize his position. Would it be much easier for the state to pursue its goals with this low standard, the balance of probability, than it will be with proof beyond a reasonable doubt? Of course it'll be much easier. But that's the whole point. Not only did we hear the very learned and capable commentary of Mr Borovoy, we heard from Ms MacDonald, who spoke in a very personal way about her very personal situation. She is the spouse of, as she acknowledges in her evidence, a former, if you will, mobster who she says has gone straight. But at the end of the day what she was trying to relate to this committee was that she perceived herself as somebody who could be in danger, put at risk, by this bill with its low standard of proof. She gave several illustrations in her own personal life of real-life events as a result of the surname she acquired upon marriage. She also expressed her real fear, personally and I think very genuinely. It was a very valuable contribution. You don't find that many people who are going to come forward with the story she had to tell to this committee.

I get back to the need for any Legislature to protect the interests of the innocent. I don't think it's a balancing act.

Safeguarding innocent people is a sufficiently worthy goal. When you talk about criminal conduct, because that's what we are talking about here, the same standards used to determine criminal culpability should be used to determine whether or not somebody has committed a crime. That's why the standard is there, to protect the innocent, not to make it harder for police.

When we are talking about the capacity of the state to rally all of its huge resources, should it choose to, against one little person, with the incredible limitations, with this unlimited scope, this is where I had sympathy with the Liberal amendments that tried to limit the scope of the offences. I understood their purpose but I had some concerns about other elements of it. You know, a crime of any stature or status, a municipal bylaw, can provoke, prompt an attack, an assault upon a resident, a person in this province under this statute. That can provoke it. That can be the groundwork, the rationale for it.

We do not, cannot, live with this standard of proof. Our objections were made very clearly in the last round in committee hearings. We moved numerous amendments, the Liberals did too, and the response of the government has been very clear. We very specifically oppose section 16. It is very much at least one of the hearts of the matters, and 16, if passed, means of course that we'll oppose the bill.

**Mr Bryant:** Let me say at the outset that if we had proportionality and had limited the scope of unlawful activity, then I would have a lot less concern for this particular provision because in fact we would be targeting organized crime and terrorism with a balance-of-probabilities test. Now, of course, the rubber hits the road, and what's the Liberal position on this particular provision? There is obviously a necessity for this province to catch up to organized crime. Since Mike Harris has been in power, the government of Ontario has lost over \$1 billion to organized crime. That's coming from Minister Flaherty and his successor. In doing so, that's going to require tools that have permitted profits and assets to escape seizure up until the present.

I hope that support of this provision is not seen as lack of support for the use of the federal tools which, again, according to the organized crime czar at Osgoode Hall Law School, are used less by this province than other provinces. What justifies the lower test, which is what it is, than the criminal test? We have a very different liberty, security of the person, interest at stake. We are talking about profits emanating from an offence. We are not talking about the limitation of a person's liberty or security. As such, a civil remedy is naturally going to be one of the balance of probabilities—and balance of probabilities has been applied in other areas where it is only, I say with some concern, property rights at stake.

When one considers what is happening to this province when it comes to organized crime, and if it is the view of the Ministry of the Attorney General—and I tend to agree with the ministry's position that it can withstand charter scrutiny. At the risk of beating this issue to death, it would have been a lot easier to make that case had we

circumscribed the offence at the outset in the proportionality test. But I'm going to say one more time, with respect to this offence, that I just think it is obvious, and certainly looking at the budget of the Attorney General, that this is going to be the case. Are criminal crowns going to pursue the Criminal Code seizure-of-asset provisions using the "reasonable doubt" test—the question answers itself—when they have the option of the "balance of probabilities" test? Then the concern comes down to this, that we've got every other province in the country pursuing one test and one kind of remedy and this province is pursuing something different.

I just hope that the federal and provincial Ministers of Justice are going to address this because, as far as I can tell, there is no transfer payment balancing out the amount that provinces are investing in this. In order for our attack on organized crime to be uniform, we are going to need a uniform approach. It is with a lot of concern, obviously, and some hesitation that we support this provision. Given that the property interests are at stake and not liberty and security of the person, we are willing to accept the commitment from this government as to the future of this provision and accept the commitment from this government that it is not going to simply abandon the federal tools.

As Mr Simser said earlier in the hearings, it should be the goal of the ministry to beef up both the federal and the provincial prosecution, although I do look forward to hearing how the ministry is going to work out those obvious conflicts that are going to arise.

**The Vice-Chair:** I'll ask the members to be very brief because we have a vote today.

**Mr Kormos:** Quickly, I'm very curious about the distinction you put forward between liberty and security of the person versus property rights. I understand the fundamental arguments. But, good grief, the bill doesn't restrict the amount of property. I think there's a piece—is it the executions act that limits what could be seized even on a judgment, that you have to leave somebody the tools of their trade so they can continue to earn a living? If it isn't the executions act, it is an act that should be called the executions act.

Taking somebody's home doesn't affect their liberty and security of person? Taking the place they live in doesn't affect their liberty and security? Taking the tools of their trade that enable them to earn a living, if they can, doesn't affect their liberty and security? In the context of this bill, that distinction is very academic, especially with the acknowledgement of the incredible effectiveness of the federal legislation but for the fact that it requires some significant resources to put into place.

That's an acknowledgement. That argument, I say to the parliamentary assistant, is basically an acknowledgement that this is, yes, a much faster route to go regardless of the fact that we may catch all sorts of other types of fish in the course of going after the shark. This is a faster route to go. That's what the parliamentary assistant would say, "Oh yes, this will eliminate the need for the huge resources." I'm troubled, again, by the



distinction somehow between liberty and security of the person versus property when the seizure of property can directly impact on liberty and security of the person in ways that imprisonment wouldn't even.

**Mr Tilson:** I'm not going to repeat what I said at the beginning of this afternoon, other than just to respond to the last comments about seizing a house or someone's tools. We are talking about unlawful proceeds from unlawful acts as approved by a court.

**Mr Kormos:** On the balance of probabilities.

1740

**Mr Tilson:** On the balance of probabilities. If it's established that there have been unlawful acts and that this property has been used in that process, I can only say, are Australia, Ireland, Great Britain, South Africa, the United States all wrong? It goes on everywhere, and to say it's not going on throughout the rest of the country—this legislation doesn't exist in the other provinces. I'm not going to repeat what I said earlier, Mr Chairman.

**Mr Kormos:** Recorded vote, please.

**The Vice-Chair:** So, shall section 16 carry?

#### Ayes

Beaubien, Bryant, Hastings, McLeod, Ouellette, Tilson.

#### Nays

Kormos.

**The Vice-Chair:** Carried. I think we should be able to deal with sections 17 to 25 together.

*Interjection.*

**The Vice-Chair:** Is there an amendment to section 21?

Can we deal with sections 17 to 20 together? Agreed.

Shall sections 17 to 20 carry? Carried.

Section 21: there is a Liberal amendment.

**Mr Bryant:** I move that clause 21(1)(e) of the bill be struck out. I'd prefer if I just let Ms McLeod speak to this amendment on our behalf.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** I'm very pleased that my colleague picked up this seemingly small almost housekeeping kind of issue toward the end of the bill. Just so people are aware of what clause 21(1)(e) is, for the record, it begins, "21(1) The Lieutenant Governor in Council may make regulations," and proceed to clause (e), which we've proposed striking out, "respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the purpose of this act."

I appreciate the fact that this has become standard fare in legislation presented by the current government. Nevertheless, I intend to speak out against this clause whenever it appears in legislation. I think the government began most noticeably with Bill 26, the large omnibus bill referred to as the bully bill, to give itself regulatory

powers beyond the scope that any government has ever sought before.

This government has been chastised at least twice in courts of law for the extent to which it is building regulatory power into its legislation. The courts of course have no power to force governments to remove those kinds of regulatory powers because governments make laws, but I do believe that this government time and time again has sought to remove from the duly elected Legislature the ability to consider any significant amendments to legislation. They've given themselves the power by regulation without recourse to the Legislature to supersede even their own laws. One justice indicated that there was a clause in an education bill referred to as the Henry IV clause and said that no government should give itself the power to put itself above its own laws. I subscribe very strongly to that belief and for that reason I will speak against, whenever I have an opportunity, the giving of broad regulatory power to the government through cabinet.

**The Vice-Chair:** Any other comments? Seeing none, I'll put the question.

**Mrs McLeod:** Recorded vote.

#### Ayes

Bryant, Kormos, McLeod.

#### Nays

Beaubien, Hastings, Ouellette, Tilson.

**The Vice-Chair:** The amendment is defeated.

Shall section 21 carry? Carried.

There are no amendments to sections 22 to 25. Is it all right to deal with those sections together? Agreed.

Shall sections 22 to 25 carry?

**Mr Kormos:** Recorded vote.

#### Ayes

Beaubien, Bryant, Hastings, McLeod, Ouellette, Tilson.

#### Nays

Kormos.

**The Vice-Chair:** Those sections carry.

Section 26 is the short title. Shall section 26 carry?

**Mr Kormos:** Recorded vote.

#### Ayes

Beaubien, Bryant, Hastings, Ouellette, Tilson.

#### Nays

Kormos.

**The Vice-Chair:** Carried.

There is a Liberal motion with respect to a schedule that was referred to in previous amendments that were defeated. Does the member still wish to put the motion?

**Mr Bryant:** I seek direction from the Chair. The fact that the chance of it passing is negligible I don't think rules it out of order. If you are taking the position that it is out of order because it requires a precursor section to have passed, then I'm going to, on this front, defer to your ruling.

**The Vice-Chair:** There is a precedent. First of all, I can't see how a schedule would appear in a bill that has no reference to the schedule. Since those motions were defeated, I don't think it would be in order to proceed with the schedule. Also, there is a precedent from Erskine May that reads as follows: "An amendment cannot be admitted if it is governed by or dependent upon amendments which have already been negated."

**Mr Bryant:** My only concern, Vice-Chair, is that having defeated one of those amendments yourself personally, you may be betraying a reasonable apprehension of bias on this particular procedural point. But I will not make that assertion. Rather, I accept your judgment on this one.

**The Vice-Chair:** Thank you, Mr Bryant. That amendment then has not been moved.

We'll proceed to the long title of the bill.

**Mr Kormos:** Recorded vote, please.

#### Ayes

Beaubien, Bryant, Hastings, Ouellette, Tilson.

#### Nays

Kormos.

**The Vice-Chair:** Shall Bill 30, as amended, carry?

**Mr Kormos:** Recorded vote.

**The Vice-Chair:** All those in favour?

**Mr Tilson:** On a point of order, Mr Chair: Where are the amendments? There were no amendments.

**The Vice-Chair:** That's correct.

**Mr Kormos:** It doesn't matter. As amended—it just carried.

**The Vice-Chair:** OK. That's correct, Mr Tilson. Thank you.

I'll read the—

**Mr Kormos:** Can we have an in favour and opposed recorded vote on that?

**The Vice-Chair:** Right. Shall Bill 30 carry?

#### Ayes

Beaubien, Bryant, Hastings, McLeod, Ouellette, Tilson.

#### Nays

Kormos.

**The Vice-Chair:** Shall I report the bill to the House?

**Mr Kormos:** Recorded vote, please.

#### Ayes

Beaubien, Bryant, Hastings, McLeod, Ouellette, Tilson.

#### Nays

Kormos.

**The Vice-Chair:** That completes the business of the committee. We are adjourned.

*The committee adjourned at 1750.*









## CONTENTS

Monday 22 October 2001

<b>Subcommittee reports .....</b>	<b>J-513</b>
<b>Remedies for Organized Crime and Other Unlawful Activities Act, 2001, Bill 30, <i>Mr Young</i> /</b>	
<b>Loi de 2001 sur les recours pour crime organisé et autres activités illégales,</b>	
<b>projet de loi 30, <i>M. Young</i> .....</b>	<b>J-514</b>

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Mr John Hastings (Etobicoke North / -Nord PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr David Tilson (Dufferin-Peel-Wellington-Grey PC)

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Mr Doug Beecroft, legislative counsel

J-20



J-20

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 23 October 2001

# Journal des débats (Hansard)

Mardi 23 octobre 2001

### Standing committee on justice and social policy

Brain Tumour  
Awareness Month Act, 2001

Nutrient Management Act, 2001

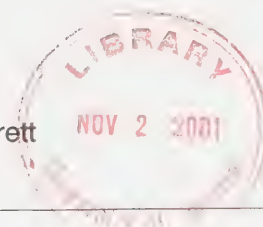
### Comité permanent de la justice et des affaires sociales

Loi de 2001 sur le mois  
de la sensibilisation  
aux tumeurs cérébrales

Loi de 2001 sur la gestion  
des éléments nutritifs

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

---

Hansard Reporting and Interpretation Services  
3330 Whitney Block, 99 Wellesley St W  
Toronto ON M7A 1A2  
Telephone 416-325-7400; fax 416-325-7430  
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation  
3330 Édifice Whitney ; 99, rue Wellesley ouest  
Toronto ON M7A 1A2  
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430  
Publié par l'Assemblée législative de l'Ontario

## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Tuesday 23 October 2001

*The committee met at 1535 in room 151.*BRAIN TUMOUR  
AWARENESS MONTH ACT, 2001  
LOI DE 2001 SUR LE MOIS  
DE LA SENSIBILISATION  
AUX TUMEURS CÉRÉBRALES

Consideration of Bill 14, An Act to encourage awareness of the need for the early detection and treatment of brain tumours / Projet de loi 14, Loi visant à favoriser la sensibilisation à la nécessité du dépistage et du traitement précoces des tumeurs cérébrales.

**The Chair (Mr Toby Barrett):** Good afternoon, everyone. Welcome to this regular meeting of the standing committee on justice and social policy for today, October 23. Our agenda initially is to consider Bill 14, An Act to encourage awareness of the need for the early detection and treatment of brain tumours. We have several delegations.

**Mr Bob Wood (London West):** Just one, actually.

**The Chair:** We've combined two groups. I would ask those who wish to present to approach the witness table.

BRAIN TUMOUR  
FOUNDATION OF CANADA  
TORONTO BRAIN TUMOUR  
SUPPORT GROUP

**The Chair:** Good afternoon, everyone. If you wish to give us your names for the Hansard recording, then you may proceed.

**Ms Katherine Ellis:** Good afternoon, Mr Barrett and all the members of the committee. My name is Katherine Ellis, and I am the executive director of the Brain Tumour Foundation of Canada. With me is Jackie Yates, a brain tumour survivor and a member of our Toronto Brain Tumour Support Group. Jackie's mother, Susan, has also accompanied us, but she will not be presenting; she's just here for moral support, she says.

I want to thank you for the opportunity you have given us today to talk to you about brain tumours and to represent brain tumour survivors and their loved ones in the many communities across Ontario and in fact across Canada.

A little bit about the Brain Tumour Foundation of Canada: it was co-founded in 1982 by a father, Steve

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Mardi 23 octobre 2001

Northey, who had just lost his little girl Kelly, who was eight years old. Kelly had died of a brain tumour. At that time, there was very little known about brain tumours, and so Steve and his family decided that they needed to set up an organization to help families like themselves and also to raise awareness about brain tumours and to try to find more money for research into the cause and effect of brain tumours. Steve tells me that when he did that he thought very naively that a cure would be found in five years. Well, here we are, almost 20 years later and as yet no cure has been found for this disease.

Brain tumours affect "the essence of the self," the control centre that governs our thoughts, our emotions and our movements. Brain tumours can impact very severely on an individual's intellectual, emotional and physical abilities, seriously affecting their employment and financial status, their family and other relationships and their quality of life.

It is estimated right now that between 10,000 and 12,000 people are diagnosed with brain tumours every year, and the incidence is increasing as our population ages. Brain tumours are the second-leading cause of cancer death among children. With improvements in treatment for leukemia, brain tumours are fast becoming the number one cause of cancer death in children; and that is certainly not a first place we like to be in.

Research is ongoing. We have found not so much a cure but that there are more than 100 different kinds of brain tumours, and this makes research very difficult and the development of effective treatments very complicated. Even with this level of incidence, brain tumours are considered a small disease group, and so our access to research funding is limited. The cause of brain tumours is not known at this point, and as I said, there is no cure at this point either.

So at this time, the best chance for survival is early diagnosis and early treatment. These treatments include surgery, radiation and chemotherapy, either individually or in combination.

Along with promoting research, the Brain Tumour Foundation of Canada has always focused on providing support to the families of brain tumour survivors and to the survivors themselves. As well, we have focused our energies on educating the public and raising awareness about brain tumours in as many ways as we can.

We do this by providing informational materials such as our patient resource handbooks, of which I have a



couple of copies here to show you. These are provided to patients free of charge across Canada, and at this point we're distributing about 200 of these a month. We've also developed handouts and pamphlets, which have been distributed to you. These contain information about brain tumours and the types of treatments. Also the one we use quite a lot is the one that we call the Signs and Symptoms brochure. It deals with the more common signs and symptoms of brain tumours. We try to distribute all of this material to the general public to raise awareness.

Since 1991, we have also targeted October as Brain Tumour Awareness Month. During that time, we do additional activities to raise awareness about brain tumours. This takes the form of media stories, public service announcements, displays and also patient information conferences. We've just held two of those, one in Ottawa and one in London. We use these methods to bring the issue of brain tumours to the attention of the public. Of course, we also organize activities to raise funds to support services and try to promote research.

1540

In previous years, several cities have assisted us with this by officially proclaiming October as Brain Tumour Awareness Month in their communities. Official support such as this makes it easier for us to distribute and display our materials through civic facilities such as health units and recreation facilities.

I want to give you one example. The region of Peel recently followed up their official support by allowing us to distribute 250,000 of these pamphlets through their utility bills. We noticed that in the time these pamphlets were distributed requests for information from that region actually quadrupled. Included in the contacts that we had was a letter from a woman who wrote to tell us that because of this information in the pamphlet, she had insisted that her mother go for a second opinion because of some health problems she was experiencing, and she wrote to thank us, because at the time that she wrote her mother was receiving treatment for the brain tumour that was subsequently diagnosed as a result of the second opinion that she received.

It's from experiences such as this that we realize how important it is to have official support and sanction of our efforts to raise awareness. We were thrilled, therefore, when Mr Wood offered to introduce and champion Bill 14, to have October proclaimed as Brain Tumour Awareness Month in Ontario. We have also been very encouraged by the support shown by all parties in the House for this bill.

I want to tell you that the news that the Ontario Provincial Parliament is considering providing official support for raising awareness about brain tumours by the proclamation of Brain Tumour Awareness Month has been well received by people affected by brain tumours and their families, not only from across Ontario but from all parts of Canada. I know of many letters and petitions that were sent to Mr Wood supporting this bill. Many of these letters carry very heart-wrenching and individual comments about the need to increase public awareness about this devastating disease.

I also know that there are brain tumour survivors in other provinces who are waiting anxiously for Ontario to set the precedent so that they can approach their provincial politicians to follow Ontario's example.

At this point, I'd like to ask Jackie to give you some insights into what it is like to live with a brain tumour and why this bill is so important to people like her.

**Miss Jackie Yates:** First of all, I'll start off by telling my story. I'm a brain tumour survivor. I was diagnosed in June 1996, when I had my first brain surgery. I was very lucky: I came through that surgery without any deficit and I went four years without any growth. I was very happy. Then, in April 2000, unfortunately, the tumour decided to start growing again, so I had to have my second brain surgery. Then I moved on to chemo. The chemo, unfortunately, didn't work for me, so I had to move on to radiation. I finished radiation in January 2001. That worked for two months and the tumour started to grow again. So this past July I had my third brain surgery. Now I'm doing chemo. I just had an MRI four weeks ago. The tumour is not growing, so I'm very happy.

Now I'd like to move on to an example of why Bill 184—sorry, Bill 14 now; it started off as Bill 184—is so important. My father's best friend has recently died of a brain tumour, and I'd like to tell his story.

Back around Christmas—actually, it was before Christmas—he started to have these different symptoms: memory loss and partial paralysis. His doctor was just putting it down to a mini-stroke, then symptoms of diabetes, that sort of thing. That went on for awhile, and his symptoms were getting worse. He finally had a CAT scan, and they discovered that he had a brain tumour. It was at this point that they admitted him to the hospital—right away. The next day he was in a coma. His tumour was inoperable, so he was in the hospital for a month and a half in a coma and died April 12. Sorry, I get a little emotional telling that story.

My point is that Bill 14 is so important to make people aware, including doctors. There are so many different diseases out there that doctors have to be aware of; unfortunately, there are so many that they can't be. But if we get Bill 14 passed and get this information out to doctors, as well as all these other people—Katheleen just told this other story about this woman—it will make a difference. It definitely will make a difference, because I know Mr Jackson would still be alive today.

Another point—I'm sorry.

**Mr Wood:** You're doing fine. Don't worry.

**Miss Yates:** Another point I wanted to make is that my doctor, my neuro-oncologist, is amazing. He's the best doctor. One thing he told me was that by the time approximately one third of brain tumour patients are diagnosed, they're disabled. I'm very lucky; I have very few deficits. But there are these other people who have a lot of deficits, and we can make a difference if we get Bill 14 passed. So we would really appreciate your help. Thank you.

**The Chair:** Thank you, Miss Yates. Ms Ellis, any further comments? Mr Wood, do you have any comments?



**Mr Wood:** I think the presenters would be prepared to answer questions from the committee, if the members have any questions.

**The Chair:** Yes, let's do that. We go in rotation. We'll start with the Liberal Party.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** I want to thank you both for coming forward to provide support for this and to make us aware of how important the passage of Bill 14 is. You needn't apologize. It's a very emotional subject, and it takes a lot of courage to come forward and tell both your story and the story of somebody who is close to you. It adds a lot to our understanding, and we appreciate your being here.

I have just a couple of questions. You'd mentioned, Katheleen, that Ontario could provide some leadership in terms of other provinces recognizing the importance of building awareness around brain tumours. Would we be the first province, then, to have actually officially declared a month?

**Ms Ellis:** Ontario would be the first province, yes.

**Mrs McLeod:** Has there been a reluctance in other provinces or is it just—because you said you'd targeted October since 1991, I think you said. That's 10 years of trying to get this moving forward.

**Ms Ellis:** The Brain Tumour Foundation of Canada is a national organization, with a head office in London, Ontario. There really isn't another national brain tumour organization in other provinces. So it has basically fallen to the Brain Tumour Foundation of Canada to take the lead, along with the help of Mr Wood, and of course we started in our home province. But we are affiliated with other organizations, smaller even than the Brain Tumour Foundation, one based in Nova Scotia and one based in BC. They are looking to us to try to approach their provincial Legislatures to follow the lead.

1550

**Mrs McLeod:** My only other question was in the area of research, because one of the hopeful things you talk about in your "Brain Tumor FAQ's" is that there are upcoming treatments that are showing promise. I'm just wondering, first of all, where the bulk of the new research is being done and, secondly, whether or not this is an area of research which gets a reasonable share of the funding that's done for cancer research generally.

**Ms Ellis:** To answer your second question, we don't feel it gets an adequate share of the funding, but as I said, in terms of cancer sites and disease groups it's a small group. While there is research ongoing in Canada—and certainly one of our co-founders, Dr Del Maestro, has recently left London to head up a new brain tumour research centre in Montreal, and hopefully there will be some major developments coming from there—a lot of the research is happening in the States, and we certainly will be benefiting. We will benefit from wherever there is research, and we at the Brain Tumour Foundation are working with other organizations and with the Canadian Institutes of Health Research to try to make sure there is more funding allocated to research on brain tumours.

**Mrs McLeod:** Lastly, there's no recognized North American centre, let alone Canadian centre, for work on

pediatric brain tumours, since the incidence is particularly alarming in children?

**Ms Ellis:** Not in Canada. I shouldn't say that. There is research happening here in Toronto at the Labatt brain tumour centre and of course in Toronto there is the cancer centre at Princess Margaret Hospital, and there are treatment and support services happening there as well as supportive research, so there are research activities happening. There is also something called the Canadian Brain Tumour Network, which is an affiliation of all of the clinicians and researchers and neuro-oncologists, radiation oncologists across Canada. It's a small community, but they share information and they also are very active in trying to get clinical trials happening with regard to brain tumour research. But the complexity of brain tumours, the number of different kinds of brain tumours has certainly complicated the issue of research and trying to find causes and cures for this disease.

**Mr Peter Kormos (Niagara Centre):** Thank you kindly for coming here and spending this time with us. It appears—and I don't know if you people can comment on this—there are in North America actual geographic differences. There are some advocates in the oncology field who are of the view that if you find a cancer, you zap it. You give it the chemo, the radiation, as much, I presume, as that patient can take, and then there are others in perhaps a more traditional perspective who say, "No, first you try one treatment regimen, and then you wait and see if that works, and then you go on to successive regimens." Have you encountered any of this difference in what appears—and I'm a layperson and nothing but—to be some real marked differences in philosophy about applying these treatments?

**Ms Ellis:** I haven't encountered that. Now, I am not a medical person, so I'm also speaking as a layperson in this field. My experience with all of the physicians and the clinicians I've encountered in this somewhat small community is that they work very effectively together and they are committed to do whatever works. As I said, whether it's surgery, radiation and chemo in isolation or whether it's a combination, my sense is that they will all work together to find the best combination that works for that particular patient.

**Mr Kormos:** You talked about a CAT scan in terms of one of your friends and what they underwent. Is that the final, effective diagnostic tool?

**Miss Yates:** MRI is. But with him they did a CAT scan. He was a very big man and MRI is enclosed. With him being in the shape he was in, they did the CAT scan.

**Mr Kormos:** Again, it is so very difficult because so many doctors now seem reluctant. Doctors used to get bad reputations for submitting their patients to huge batteries of tests, the labelling of them within the medical community by their peers. A doctor is in a strange position: damned if you do, damned if you don't. If you're a doctor who immediately submits a patient to the whole regimen of tests, you're accused of overtreating and pandering to the patient's fears. But it is obvious when they don't, then they're the ones whom families in



their grief and sense of loss point to and do all the what-ifs and you-should-haves. That's a dilemma, isn't it?

**Ms Ellis:** I don't know that it is a dilemma in this field, because there aren't that many tests that can be done, I would say.

**Miss Yates:** I can tell you the story of what my family doctor at the time—she's not my family doctor any more because she moved on to another type of practice. But at the time I went in, and my symptoms were different from what a lot of people go through; I was experiencing what I'd call spells. My doctor allowed me to call them spells. They still do. What it is, I can be talking to you and I could carry on a conversation with you, but what you were saying was a little distorted. This was going on, so I went to the doctor. I, luckily, have a slow-growing tumour.

I was having this for a very long time and I thought it was stress. I was in a new job. I finally went to my doctor and I told her, "I think it is probably stress." A lot of doctors will tell you that, actually. They're bad for that. I will be the first one to tell you that. But my doctor was very good and she said, "You can't put everything down to stress." So we started off doing different things. We did a 24-hour EEG, and that showed that I was having little seizures, which is what my distortion of the voices actually is, but I don't like to call them seizures. So she put me on anti-seizure medication.

Then she said, "Let's schedule a CAT scan." CAT scans, as MRIs, are very hard to get. I had to wait, I don't know, over a month; I think it was probably closer to two months. I was lucky because of the type of tumour I had and the stage it was in. It was a slow-growing tumour at the time. Other people start off with really aggressive tumours. Then I had the CAT scan. I should tell you, though, why my doctor probably did this procedure. Her mother-in-law had been diagnosed with a benign brain tumour the year before, so she knew the symptoms. There is an example of—I was fortunate because my doctor was aware of brain tumours, whereas other doctors never see any.

Does that answer your question?

**Ms Ellis:** Maybe I could just pick up on that.

**Mr Kormos:** That's helpful. Yes.

**Ms Ellis:** If I could just add to that: Jackie did say something about informing not only the general public but also some of the family doctors. This is not meant to be disrespectful to family doctors, but brain tumours are not something they see on a regular basis. One of our co-founders, Pam Del Maestro, who was running our support group in London, said that one day she went around the room—there were about 20 people in the room—and asked them what their presenting symptom was. Every one of them had a different presenting symptom.

You can imagine a family doctor who doesn't deal that much with brain tumours trying to deal with this kind of situation, where no two persons perhaps present with the same kinds of symptoms. That's why it is sometimes so difficult to make the diagnosis. That's why we

really need to increase awareness, even at the community level, so that people are more aware that some of these symptoms—you don't want to necessarily scare everybody and you don't want to send everybody off for a CAT scan or an MRI, because they're too expensive. But if people are more aware that some of these things may not be stress—it might be something else. Some of the vision problems could be a result of brain tumours.

If they are aware that the symptoms they are encountering have another option besides, if they've exhausted everything else and if they know this might be a symptom of a brain tumour, then hopefully they will also then make the referral for the appropriate diagnostic test.

1600

**Mr Kormos:** Thank you very much.

**Ms Marilyn Mushinski (Scarborough Centre):** I'd like to thank all of you for coming in this afternoon. I'm particularly pleased and very proud that you're from my riding, Jackie. It takes a lot of courage to do what you've done this afternoon, and I really appreciate it.

I have a couple of questions. I guess a brain tumour is classified as a form of cancer. Is that correct? Do you have any association with the Canadian cancer association or are you a completely separate entity? And is there a reason for that?

**Ms Ellis:** We are a separate charity. We are affiliated with the Canadian Cancer Society in something called the cancer advocacy network, where there are 12 different cancer site organizations working together. We certainly have partnered and will look to partner with other groups as appropriate.

**Ms Mushinski:** Is it the complexity of—

**Ms Ellis:** I think it is the complexity. Certainly the Canadian Cancer Society, it is my understanding, when I've been talking to representatives from CCS, doesn't presume now to speak for every cancer group. The breast cancer has branched off on its own. Prostate cancer has branched off on its own. I certainly wasn't around with this organization when it was started 20 years ago. I think at that time, probably the same as with breast cancer, Steve and the co-founders felt that there wasn't enough information.

Again, no disrespect to the Canadian Cancer Society. Maybe there wasn't enough attention being paid to this particular disease from that society, which of course has so many things it is trying to address. While some of us have branched off into our own organizations, we are now starting to come back to work together on themes that are consistent across the board through things like the cancer advocacy network.

**Ms Mushinski:** I was interested in your brochure. I would have thought the numbers would be considerably higher than 10,000 Canadians. Can you give me an indication of what percentage of that 10,000 would be children?

**Ms Ellis:** I can't. We have some problems with the statistics right now. This 10,000 to 12,000 is an estimate. The problem we have with statistics, that we are also trying to address, is that the statistics that are collected

right now only refer to what are called primary site tumours and malignant tumours.

**Ms Mushinski:** What's the difference?

**Ms Ellis:** Primary site tumours are brain tumours that actually originate in the brain. There are a number of brain tumours that are metastasized tumours. There may be other cancers, such as breast cancer or lung cancer, that now, with advances, are cured but they now metastasize and become brain tumours. Those tumours are still recorded as their primary site. Even if the person is being treated for a metastasized brain tumour, the statistics that are currently being collected reflect them as whatever the primary site is.

The other issue we are dealing with is that unlike other kinds of cancer, a benign brain tumour can kill you, whereas in other kinds of cancers benign tumours are considered not really as life-threatening as malignant tumours. Because we are dealing with the brain, a benign tumour—as Dr Guha from Toronto said, if it's in your brain, it ain't benign, because it can still impair your quality of life, your ability to function, your cognitive ability, and if it's a relatively fast-growing benign tumour it can kill you.

Because of both those issues, which we are currently trying to address with Stats Canada and Health Canada, we do not have what we consider accurate statistics on the incidence of brain tumours. That's another long struggle that we have ahead of us: to try to educate the public and encourage Statistics Canada and, I guess, all the data-gathering organizations and health facilities across the country to look at brain tumours in a slightly different form than they are right now.

**Ms Mushinski:** Thank you. I think Mr Gill has a question.

**Mr Raminder Gill (Bramalea-Gore-Malton-Springdale):** Thank you, Katheleen and Jackie, for coming in and sharing your story with us. It does give us more awareness about what this disease is all about. As I understand, you're saying early detection certainly helps. Is it then reversible? Can you fully cure the problem?

**Ms Ellis:** No, it isn't.

**Mr Gill:** No. I understand from your literature, as well as from your presentation, that perhaps it affects the younger group and seniors more and not the middle-aged as much.

**Ms Ellis:** We're seeing an increase in incidence among seniors, and that may just be because our population is aging and also because there are more treatments available for other cancers, such as breast cancer or prostate cancer, so people are being cured of those cancers. Again, you have the situation of a metastasized tumour as people get older.

**Mr Gill:** I also agree with Mr Kormos that sometimes we put a lot of—I don't think the word is "demand," but we expect a lot of our physicians, saying, "I've been going to you for two years. How come you were not able to detect it?"

**Ms Ellis:** That's right.

**Mr Gill:** Unless, like Mr Kormos said, they should sort of come up right away with all these hundreds of

tests, and then the peer group accuses them of wasting taxpayers' money. It's a difficult situation, but I'm certainly happy that your group is raising awareness much more, and hopefully many lives will be saved.

Another question I have: since your father unfortunately also passed away, does it run in the family?

**Miss Yates:** No, it was my father's friend.

**Mr Gill:** Oh, your father's friend. OK, that's fine.

I'm happy that Peel region, where I live, was able to co-mail this for a good cause. I guess it's very hard to keep statistics as to, out of 250,000 mailings, how many people after reading it said, "I have a lot of these symptoms: hearing impairment, dizziness," and then went to the doctor, saying, "You know, Doc, I got this pamphlet, and I have a few of these symptoms. Would you please check me?" Do you keep any statistics on how many went ahead with that check and what was found? You said that a case was found.

**Ms Ellis:** We don't keep those kinds of statistics, but we did accompany that distribution with a mail-out to the family physicians in that region, and we have had some of them contact us for further information for their patients as well. My thought is that if somebody was looking at this and saying, "I have three symptoms of a brain tumour," I'm sure the family physician would be able to identify other possible causes of what's happening to them. We just want to bring the consciousness of a brain tumour to them, as well as some of the other aspects they're dealing with.

1610

**Mr Gill:** Of the people who have this medical problem, is it, generally speaking, too late by the time it's detected?

**Ms Ellis:** Not if it's detected early.

**Mr Gill:** It doesn't quickly deteriorate, and then you can't do much?

**Miss Yates:** It depends on the type of tumour. As Katheleen said, there are over 100 different types of brain tumours.

**Mr Gill:** I meant percentage-wise, by the time they detect it. Does it grow so bad quickly enough?

**Ms Ellis:** It really depends on the type of tumour. Some of them are fast-growing; some of them aren't. For us, regardless of what kind of tumour it is, the earlier you can have it diagnosed and treatment started, the less chance there is of it growing to the point where it becomes a problem or, if it is a faster-growing tumour, the better the chance of controlling it and stopping the growth to some extent, for as long as possible.

**Mr Gill:** I also want to thank my esteemed colleague for taking up this cause. I think it's a very worthwhile cause. Thank you, Bob.

Mr Chair, we're done.

**The Chair:** Does that complete questions from all three parties?

I would ask if there are any other comments. Are there any amendments that anyone wishes to bring forward to this legislation?

**Miss Yates:** May I say one thing?



**The Chair:** Yes, please.

**Miss Yates:** I'd like to say what a wonderful organization the Brain Tumour Foundation of Canada is. They've helped me a lot—actually, I have a support group meeting tonight. I've met other brain tumour survivors. Just this past weekend we had an information day in London, where they had experts, doctors, speaking to us on various topics. It was wonderful. It's very informing and it's so well-run. They're an excellent organization.

That's why last year I had my first charity golf tournament to raise money for the Brain Tumour Foundation. I'm happy to say I raised \$15,750. I named it after Don Jackson, my father's friend. I had started to arrange the tournament beforehand, and then when he passed away, I named it after him. I want to help the organization. They have tissue banks, so that the scientists can do research. It's just an amazing organization.

**Ms Ellis:** I didn't put her up to that.

**Miss Yates:** Oh, no.

**Mr Wood:** I encouraged her.

**Miss Yates:** And I'm going to live to be 80. I have to always tell everybody that. That's my saying.

**Mr Gill:** You should put all the MPPs on your mailing list.

**Miss Yates:** It sold out. I had people calling me two weeks before, and I had to put them on a waiting list.

**Ms Ellis:** I have one piece of good news to tell you, which Jackie has given me permission to tell you. She's getting married in February next year.

**The Chair:** On behalf of the committee, that is good news. I do wish to thank you, Miss Yates, Ms Ellis and Mr Wood.

That completes the deputations. If you wish, you can have a seat in the audience.

I would now indicate to the committee that, if you wish, we can go forward with clause-by-clause. Could you turn to the legislation.

**Mr Kormos:** Can you put sections 1, 2 and 3 to us?

**The Chair:** Do you wish to collapse the three sections?

**Mr Kormos:** I'm suggesting you put sections 1, 2 and 3 to us.

**The Chair:** Separately or together?

**Mr Kormos:** Together.

**The Chair:** We are now doing clause-by-clause on Bill 14, An Act to encourage awareness of the need for the early detection and treatment of brain tumours.

As suggested, collapsing section 1, section 2 and section 3 together, shall the three sections carry? Carried.

Shall the preamble carry? Carried.

Shall the long title carry? Carried.

Shall Bill 14 carry? Carried.

Shall I report the bill to the House? Carried.

**Mr Wood:** May I, Mr Chair?

**The Chair:** Yes, Mr Wood, briefly.

**Mr Wood:** May I thank all members of the committee and all three parties for their help in carrying this bill through to this stage. I really think it's going to make a positive difference in the lives of a number of Ontarians

and hopefully in the lives of a number of Canadians. Thank you all very much.

**The Chair:** Thank you, Mr Wood. I declare that order of business closed.

## NUTRIENT MANAGEMENT ACT, 2001

### LOI DE 2001 SUR LA GESTION DES ÉLÉMENTS NUTRITIFS

Consideration of Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts / Projet de loi 81, Loi prévoyant des normes à l'égard de la gestion des matières contenant des éléments nutritifs utilisées sur les biens-fonds, prévoyant la prise de règlements à l'égard des animaux d'élevage et des biens-fonds sur lesquels des éléments nutritifs sont épanchés et apportant des modifications connexes à d'autres lois.

**The Chair:** The second order of business is Bill 81. Deputations from two parties are scheduled at 4:30. I see no witnesses at this point. Shall we take a 10-minute recess and return at 4:30?

*The committee recessed from 1616 to 1632.*

## MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS

**The Chair:** We will reconvene the standing committee on justice and social policy. Our second order of business is consideration of Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts. We have two delegations: the Minister of Agriculture, Food and Rural Affairs; and at 5 o'clock the Ontario Federation of Agriculture. I now wish to ask the Honourable Brian Coburn if he could approach the witness table. We have half an hour, sir.

**Hon Brian Coburn (Minister of Agriculture, Food and Rural Affairs):** Good afternoon, everybody. Thank you very much, Chair and members, for giving me this opportunity once again to speak to you. When I was here earlier, at the start of your hearings, in the opening remarks on the importance of the Nutrient Management Act, 2001, I went over at that time in considerable detail how we had developed Bill 81 through the extensive consultations we had with a large variety of stakeholders who have an interest in this particular issue. The purpose of the bill is to protect the environment and provide a sustainable future for agriculture and rural development by providing clear, consistent standards for managing land-applied materials that contain nutrients on our farms. By doing this, we can only increase the competitiveness, certainly, of our agri-food industry and enhance the quality of life in rural Ontario.

Since that time, of course, you've been busy and have had nine public hearings in locations right across the province. I understand that you've had a number of excellent presentations and some 175 organizations, municipalities and individuals were focused and thoughtful in their presentations. This is the kind of reception we've received as well at the ministry, where the people of Ontario care deeply about our farms and about the environment and about the communities they live in.

I'd like to thank the committee for their efforts and for providing an essential service in the development of this legislation.

I also want to acknowledge the outstanding work done by my parliamentary assistant, Doug Galt, and by the Chair, Mr Toby Barrett, who was the parliamentary assistant to the Minister of the Environment at the time, for their capable leadership and the success of the province-wide consultations that were of considerable assistance to us.

I would like to recognize the Minister of the Environment as well for her willingness to work with me and our ministry to ensure that this proposed legislation does realize its goals of protecting and enhancing the health of the environment while sustaining and promoting the competitiveness of our agriculture industry. Also, I would be remiss if I did not recognize the contribution of my predecessor, Ernie Hardeman, who must be credited with recognizing the need for this legislation and acting on that recognition.

As you are aware, many people contributed to the development of this proposed nutrient management legislation. I believe that by balancing all of that input, we have proposed legislation that would, by putting in place preventive measures to address the effects of agricultural practices especially as they relate to land-applied materials containing nutrients, protect our water, our land and our quality of life.

As we move into the next phase of the legislative process, I'd like to provide some thoughts on how I think we can make this bill even better, based on the feedback that has been received during the hearings.

The Nutrient Management Act sets out a comprehensive and integrated approach to all land-applied materials containing nutrients, ensuring that they will be managed in a sustainable, beneficial manner which results in environmental protection and public confidence in future agricultural and rural development. That's why the proposed act would provide authority for regulations governing several areas, including areas such as making nutrient management plans mandatory; requiring the certification of commercial land applicators of materials containing nutrients; setting distance requirements for manure and biosolids application near wells and waterways; establishing and delivering associated education, training and certification programs; and establishing minimum quality and application standards for land-applied materials containing nutrients.

The people of rural Ontario asked us and tasked us to do what it takes to protect their quality of life and to clearly outline the roles and responsibilities relating to

the management of land-applied materials containing nutrients, and also to provide a framework that allows a balance between agricultural growth, environmental sustainability and community well-being. I believe that, by and large, Bill 81 accomplishes this, but of course we can do better, as you've discovered through this hearing process. That's certainly why this legislative process is in place: to proceed with the best possible piece of legislation.

In response to some of the concerns that you've heard and I've heard over the last period of time, stakeholders commented on all aspects of the bill and its implementation. People contributed suggestions, certainly, on everything from amending the bill to potential standards, to how it should be enforced, to meeting research and education needs. Farmers and farm groups particularly are concerned that the legislation won't cause undue hardship to their competitiveness in the agri-sector. On that particular front, I can assure the committee that the legislation is designed to increase agricultural competitiveness, not destroy it.

As I mentioned a few weeks ago, consumers everywhere want assurances that the foods they eat are not just of high quality, are not only safe, but also that those foods have been produced using environmentally sustainable practices. In the future, the desire for those assurances will indeed become a demand. This proposed legislation would also help Ontario's agri-food producers anticipate that demand. Clear, consistent standards, regular audits and inspections and strong enforcement of the standards are measures that will send a clear signal to consumers everywhere that Ontario's farmers have indeed raised the bar.

#### 1640

Of course, as we go through this, nothing comes for free, but on the other hand, every sound investment yields a return. Ontario's farmers know that, and that's why many of the primary producers have already voluntarily invested their money in environmental stewardship through their involvement in the environmental farm plans and best management practices.

In terms of the proposed legislation, my ministry and the Ministry of the Environment would ensure that an economic impact assessment is done as part of investigating regulatory practices and options. In addition, the University of Guelph is also conducting a study on this issue, and my ministry has provided funding to conduct that study.

We know that farmers and farm groups are also very concerned about protecting their animals from health hazards. They don't want to worry about diseases inadvertently being transmitted to their animals by enforcement officers, and I agree. I think it's only prudent to provide assurance to farmers that any provincial officers entering their property will follow strict biosecurity protocols.

Another issue that was raised during the hearings was the desire for public notification of where and when nutrients are being spread. I believe this can be addressed through the regulatory process. All draft regulations



under this act will undergo rigorous consultations before they're put in place. We'll work with the stakeholders to ensure that the regulation meets both the public's need to know and any need for confidentiality in order to remain competitive.

Concerns around the agricultural experience of both the environmental appeal tribunal and the provincial enforcement officers can be addressed by ensuring that they are well trained. In the case of the tribunal, this can also be handled through new appointments and cross-appointments from existing OMAFRA or ministry boards. It's entirely appropriate to make sure that people making decisions that will affect farmers are knowledgeable about agriculture. I think that's something that has come through to us loud and clear, and it's certainly a major initiative of mine.

I know you heard from many municipalities and groups who were concerned about handling nutrient management issues between now and when this bill is passed and the regulations come into effect. We recognize the importance of this issue and understand that local councils are under pressure right now from many different sides. I want to assure you that the government will work with municipalities during the transition period in a number of ways, such as continuing to help municipalities with bylaws, continuing to offer them help with reviewing nutrient management plans and working as quickly as possible to address priority issues through Bill 81. In addition to that, many municipalities with interim control bylaws either have or are working to put new, longer-term bylaws in place. The model bylaw that we have developed in the ministry has proven to be very useful and effective in those situations.

Finally, I want to touch on the concept of alternative service delivery. I know that many contributors to the hearing were concerned about alternative service delivery, and I want to emphasize that under the proposed legislation, enforcement would never be provided through a third party. I think we must also realize, however, that there are many extremely competent businesses that can and do provide excellent services regarding the management of nutrients.

I have every confidence that Bill 81 can do the job. It's clear, it's strong and it's what the people of Ontario have told us they want through extensive consultations. It provides a firm foundation on which we can encourage a thriving agricultural sector while protecting our environment. This proposed act is a piece of legislation whose time has more than come, as we all know. I know that as members of this committee work through the process of making it ready for passage, you will accomplish the task as efficiently and effectively as you have up to now. Our communities, our food producers and our environment are counting on us to do it right.

**The Chair:** I will provide an opportunity for all three parties for any comments or questions. We'll begin with the Liberal Party.

**Mr Steve Peters (Elgin-Middlesex-London):** Thanks, Minister, for being here today. It's obvious you've been reading the Hansard, and George Garland,

who toured around, has kept you up to speed on some of the things. I think George was a trouper like Toby, Tom and myself, who hit all the presentations. I think that's important.

A couple of things that we didn't hear a lot about jumped out at me, like the spreading of biosolids. We didn't have a lot of presentations on that. It's certainly something that is in the news, as recently as Toronto's biosolid pellets in storage; are they going to spontaneously combust? The spreading of pulp and paper sludge is something else we heard very little about. Those two areas, in my opinion, certainly warrant some further investigation.

There was a definite mood shift in the province from southwestern Ontario to eastern Ontario and into the north. The attitudes toward this legislation, I think, changed. I don't know whether that's a geographic issue or what, but eastern Ontario in particular had some different comments.

I think a few things need to be considered. The interim control bylaws are coming to an end in some municipalities and there's some concern. They've already extended them once. Under the Municipal Act, they can only extend, and that's it. There are a number of issues; I'm not sure whether we're going to get into them today. We can wait for the presentation from the OFA. Some of the things: the regulations—you made the commitment right in the beginning, at the opening presentation, about the consultations on the regulations, and I think that one came through loud and clear everywhere; money, of course; the divisions on enforcement; and a lot of concern was expressed over the privacy of the nutrient management plans and what access the public is going to have.

One of the issues that came up in a number of places was the question of the minimum land ownership. There are a number of county bylaws in place. Some of them said that you had to own 20% of the land, some said 30% and some said 40%. Where does that all come out in the end with the regulations from this piece of legislation? The question of liability of the local committees—if they go out and try to moderate an issue or the local committee gives recommendations on something and if they are wrong, who's going to accept liability for that? Local conditions was another one, I think; and it's local conditions/geography. In Essex county, the farmers are on the field a heck of a lot sooner than they are in northern Ontario. So the question of local conditions came up.

You addressed the economic impact study. That was a constant theme. There was some concern over the potential of environmental impact studies and the potential for a need for those. Municipalities are certainly concerned about the authority they already have existing under the Municipal Act and with their own official plans and zoning bylaws. What supersedes what? You know municipalities are the on-the-ground politicians who know the local conditions, so some concern was expressed that way.

I've got a few others here that I think we will address at the amendment stage. For one, and we sent some information to your office today, there was a serious spill in Huron county today. A lagoon has overflowed, and it's quite a serious situation in Huron. So it's going to be back in the news again tomorrow regarding this legislation.

A question I'd like to pose to the minister is, are there amendments coming from your ministry that this committee is going to see? I know we will be putting forward amendments, and I'm quite confident the third party is going to be doing the same thing. But will we be seeing amendments to this legislation from your ministry before we go back to third reading?

**Hon Mr Coburn:** There will be amendments coming forward, yes.

**Mr Peters:** That's all I had right now, Mr Chair.

**Hon Mr Coburn:** Thank you very much for that information.

1650

**The Chair:** The NDP?

**Mr Kormos:** No, sir.

**The Chair:** I'll go to the PCs. Ms Mushinski, any comments or questions?

**Ms Mushinski:** Minister, will we receive those amendments before 5:30 tonight so that we can pass this legislation, or do you want us to wait a little?

**Hon Mr Coburn:** I'm working on trying to have the amendments brought here, yes.

**Ms Mushinski:** OK. I had the distinct pleasure to visit rural Ontario in order to hear all about nutrient management. I thought nutrient management was a bit of an oxymoron, coming from an urban centre like Scarborough, but discovered in reading the regulations and the legislation that it's quite an interesting—

**Mr Peters:** On a point of order, Mr Chair: Are there regulations that have been prepared? I am certainly not aware—

**Ms Mushinski:** I meant to say legislation. Sorry.

**Mr Peters:** OK, thank you.

**Ms Mushinski:** This is enabling legislation—

**The Chair:** Oxymoron is not a farm animal.

**Ms Mushinski:** You did say in your letter that you expect that Justice O'Connor's report will pertain more to the regulations than the act itself because it is enabling legislation. I'm assuming that the amendments you'll be working with, obviously with extreme co-operation with both the Liberal Party and the New Democratic Party, will clearly reflect what you heard around the province in terms of perhaps building on the enabling portion of the legislation; is that correct?

**Hon Mr Coburn:** I believe it does, yes.

**Ms Mushinski:** I don't have any more questions.

**The Chair:** Mr Gill.

**Mr Gill:** Minister, thank you very much for appearing in front of this committee. Just a quick question. You talked about increased competitiveness in terms of this legislation. Can you please elaborate on that?

**Hon Mr Coburn:** One of the things that is happening in agriculture, and this is throughout agriculture, is production practices. We want to build on good management practices that a lot of farmers use and implement on a daily basis. The consumer is becoming much more inquisitive about where the food comes from, how it's managed, how it's grown, what nutrients are applied, whether it's fertilizers or nutrients, what type of nutrients and those kinds of things. This presents a regime that I think will stand the test of time.

We've got a nutrient management plan that I'm sure the committee is familiar with. That's a scientific analysis on how we handle nutrients, and that becomes the very cornerstone of this legislation. That helps determine the number of livestock, the acreage needed, the type of soil. It takes all of that into account, the slopes and the grades, the ditches, the wells and all of those kinds of things. It's quite comprehensive and quite detailed. We have heard from the agricultural community that they're very supportive of this.

There's also another recognition. As I stated earlier, we're not out to break the agricultural industry. We're here to work with them. Some of the farmers who have implemented a lot of these responsible practices and invested in them before this legislation came along have recognized these far in advance of us, and we're building on input from those stakeholders.

**The Chair:** Our allotted time is pretty well wrapped up, unless there are any final comments. Any one-minute statements?

**Hon Mr Coburn:** Thank you very much, Chair and members. I appreciate the input.

**The Chair:** Thank you, Minister.

## ONTARIO FEDERATION OF AGRICULTURE

**The Chair:** Our second delegation today is the Ontario Federation of Agriculture. Good afternoon again, gentlemen. For Hansard, we'll ask for your names. We have until 5:30.

**Mr Jack Wilkinson:** Thank you. Jack Wilkinson, president of the Ontario Federation of Agriculture, and David Armitage, who's having a side conversation, who's senior policy analyst, has been very involved in the development of the nutrient management plans.

**The Chair:** Please proceed.

**Mr Wilkinson:** I'm only going to take a couple of minutes for my end because we really appreciate the committee following up with our offer to come in front of the committee and offer up a bit of a technical briefing. David is going to run through a number of the elements that we think will be in nutrient management plans.

To be fair, there are numerous nutrient management plans that currently exist out there. There are a number of companies that have developed nutrient management plans for their particular farms. They may have growers on contract. OMAFRA and others have put forward the



type of nutrient management plans that they think are appropriate. So David will deal with some of the generic issues and how we would deal with those issues as part and parcel of what we hope will be in all nutrient management plans: the soil type, the animal units, liquid manure versus dry manure, placement from streams and communal wells, a host of issues that we think are very important for the committee to see what we're offering up on behalf of the farm community to meet the standards of society.

Therefore, we hope the amendments we have tabled with the clerk in regard to the enabling legislation and, further, in our conversations about developing regulations—if you have a sense of how inclusive we are with this plan, some of our recommendations for changes to amendments and on the regulatory side of the discussion will make more sense.

With that, we'd prefer to start and then answer any questions. I think the technical side has just dropped off the face of the map. We brought down, of course, the disk that would run through that, but knowing full well that that sometimes works and sometimes doesn't, we'll move very quickly to the printed tree version that we have in front of us. David, go ahead.

**Mr David Armitage:** I apologize. There was a bit of a cabling problem connecting our notebook computer to the projector. But in that green folder that you've been presented with, if you just open it up, there is a nutrient management planning presentation on slides—two slides per page. That's what I'll be referring to.

Initially, the objective of nutrient management planning is to ensure that the rate of applied nutrients meets the requirements of the growing crop while taking into account the nutrients that are resident in the soils. That's the objective of the nutrient management plan, and I think my objective here today is to just illustrate to you the rigour that goes into preparing such a plan.

The benefits to the farmer and to society of planning agricultural nutrient use are: the societal assurance it provides if people realize that agriculture nutrient is being properly managed. From the farmer's perspective, it optimizes crop input costs. It doesn't necessarily minimize them, but it will optimize them in terms of the profitability of the farm. It provides increased flexibility. By going through the planning exercise, they can determine where the nutrient is most usefully applied and to what crops. Finally, it can demonstrate that farm expansion can be attained without additional environmental impacts.

The various components that Jack referred to, or the elements that go into a nutrient management plan—it's dependent upon soil testing, either manure analysis or matching to a book value for manure nutrient; the crop requirements for nutrient: any supplemental fertilizer by way of mineral fertilizer or biosolids application; good neighbour policy: we put an enormous emphasis on that just to make sure people are taking into account what their neighbours may be planning; calibration of machinery: applying the nutrient is very important, that one has

a good idea of both the weight and the volume of nutrient that's being applied; record-keeping in terms of tracking this over the entire farm over a cropping period; and finally, contingency planning in the event that there is a spill of manure or mineral fertilizer or biosolids.

The various sources of nutrient: most plant growth is provided for through nutrients resident in the soil, but additional nutrients can be applied by virtue of manure, through the residual manure from previous applications of either plant or commercial fertilizer. There is also nutrient provided by legume crops, both growing legume crops and particularly if the legume crop is plowed down, and biosolids.

#### 1700

Opportunities through the application of nutrient: the manure in particular contains many nutrients: nitrogen, phosphorus, potassium and a number of micronutrients. Many of those nutrients are stored in the soil, so they're available over consecutive years, and there is also an organic fraction, so the soil tilth can be improved through the application of manure. Finally, manure can be available right on the farm, so it is not necessarily a purchased input, although it can be a purchased input. If a farm that does not have livestock wishes to increase the organic component of the soil, they may very well bring nutrient on to the farm.

Challenges in terms of manure: the nutrients within manure—while the nitrogen, phosphorous and potassium may be there, they may not necessarily be in the proper ratio. That has to be taken into account and perhaps addressed through supplemental fertilizer. The nutrient that is available varies over time and it is generally relatively low. Also, there are questions about odour concerns that have to be addressed. When manure is applied as a nutrient, there is potential for the manure to move overland and contaminate groundwater or to percolate through the soil for groundwater contamination and move over that for surface water contamination.

Also, if one isn't careful, there is the opportunity for soil compaction. If you're travelling with very heavy manure application equipment over wet soil, you can have soil compaction.

The analysis of manure can be, as I say, either laboratory testing for a proper sampling analysis or there are book values that are available. Again, focusing on the composition of manure, we have a number of macronutrients in nitrogen, phosphorous and potassium, a number of micronutrients ranging from calcium to manganese to zinc, and micro-organisms; that's where we get into the bacterias and the pathogens. I should point out that they're not all deleterious. There are some decomposers within that micro-organism mix which are very helpful in terms of breaking the organic material down and adding to that soil tilth.

The composition of manure varies considerably by virtue of the livestock type, and there we can get into the genetic makeup of the livestock, the ration of the livestock and the bedding that is provided. Whether it's straw, sawdust or shavings, those all have a bearing on



the actual nutrient that is transferred to the soil through manure.

Then there's the manure handling and storage, whether it's a liquid manure or a solid manure, and whether it's applied—whether there's direct injection or later incorporation or no incorporation. All of those have a bearing on the nutrient availability. Other factors would be the texture of the soil, the cropping practices, and even weather has an enormous impact.

By way of an example, the following slides look at the actual planning process on the farm. The first thing the farm operator has to do, and this is done on a field-by-field basis—I think it is the OFA's contention that this is much more rigorous in that it actually determines the nutrient application and requirement at the field level, which is far better than any provincial standard could possibly attain.

In terms of planning, at the field level they would identify the size of the field, the crop that's to be grown in that field and the projected yield for that crop. They'd also identify any previous crop—in other words, last year's crop—the soil texture, the soil test results for both parts per million of potash and parts per million of phosphate. I know there was a question earlier about land ownership. It is our contention that if land is not owned there has to be a formal land agreement in place to provide assurance that that field will be available for application.

Finally, if there is an intention to haul nutrients more than 20 kilometres, there has to be some additional documentation that indicates that the equipment necessary for that hauling is available to the producer.

That's basically the field information.

In terms of manure information, again at the field level they have to indicate the livestock class that is generating the manure, the dry matter of that manure and when in the year they plan to apply it, whether it's spring, summer, fall, late fall. We would not advocate winter spreading unless it's under very unusual circumstances. They would indicate their incorporation time, whether it's their intent to inject it, incorporate after 24 hours, after 48 hours, after 72 hours or, as I say, not to incorporate it. All that has to be documented.

Then they have to calculate their nutrient values. In the case of liquid manure, that would be pounds of NPK per thousand gallons, so they then go through an exercise in achieving that.

That's where they're at in terms of their field description and their manure description. Then they get into the process of documenting any supplemental fertilizer they may wish to use by way of starter fertilizer, given that manure may not be immediately available. They also would want to document and calculate by virtue of the previous crop what nutrient might still be available in the soil from that previous crop, and also the nutrient available in the soil from previous manure applications. Then they would calculate for their own manure and for the requirement of that growing crop, and then they'd get into some balancing exercises for both the crop removal and the agronomic nutrient.

The next slide just goes through the process for starter fertilizer. So the actual calculation: if they're using a liquid fertilizer with a ratio of 6-18-6, which is 6% nitrogen, 18% phosphorous and 6% potassium, they can quite easily, by knowing the application rate and the density of that liquid fertilizer, determine the actual amount of N that is being made available, the amount of phosphorous and the amount of potassium. So they can go through that exercise and then they know what's available from that.

They can also get an availability from the previous crop, from previous manure and from their own manure. In calculating for their own manure, they would need to know the soil texture, which we've already dealt with. The fact of liquid manure presents much greater concerns in terms of runoff, so that's a distinct difference between solid manure and liquid manure. The slope is also a factor there, as is the speed at which the manure would be incorporated. So this is another element, then, of that nutrient management plan.

In terms of the crop requirement, I think then we would generally look to the OMAFRA publication 296. If we assume that the corn is being grown with a projected yield of 135 bushels per acre, then the end recommendation would be 128 pounds per acre out of 296.

1710

The phosphorus recommendation: if we have a soil test showing phosphorus at 35 parts per million, the recommendation would be that there's no phosphorus applied. For potassium, we'd be looking at 71 pounds per acre. Again, these are calculations the farmer would conduct based on the crop requirement and taking into account some of those other factors that had been available.

The agronomic nutrient balance is basically a function of the starter fertilizer nutrient, plus the nutrient from the previous crop, plus that from the previous manure, plus that that is currently applied, minus the requirement of the growing crop. In the case of nitrogen, from this sample there would be 22 pounds per acre required of N. We can go through the same exercise for phosphate and potash; we would see 73 pounds of phosphate would be required and 10 pounds of potash.

Having gone through that agronomic nutrient balance, if there's a negative balance, then you could have a reduction in crop yield. Obviously, you're not applying nutrient to the crop requirement. If there's a positive balance exceeding 15 pounds per acre for either nitrogen, phosphate or potash, then the indication is that significantly more nutrient is being applied than is required. That excess, through management, would be better applied to a different field. Remember, we're just looking at that one field through this exercise. There will be additional fields, and that may be where one would better apply additional manure.

Crop removal balance is just another step that's required if there is a balance exceeding 15 pounds per acre. Again, this is just a check that if there's 15 pounds



per acre excess, then you have to go through another series of calculations essentially to determine how to best address that. There again, you look back to the starter fertilizer value, to the nutrient applied and to that which is removed by the crop.

A positive balance in terms of a crop removal would indicate that the nutrients are exceeding those removed from the soil by the current crop. In the sample that's presented here, 82 pounds per acre is too high for an annual application. The annual application cut-off is usually around 75 pounds per acre, but one way you could address that would be to not apply annually but to apply once every two or three years. That is an acceptable method and one that is agronomically sound. You wouldn't want to go more than two or three years or you would definitely be over-applying.

The phosphorus index is something that certainly is important, and again there is a series of calculations to arrive at that, and it's required if the phosphorus soil test exceeds 30 parts per million. In phosphorus, we rely heavily on the universal soil loss equation, which farmers are familiar with and are quite cognizant of the fact that phosphorus tends to adhere to soil particles and move over land with those soil particles as they're moved through erosion.

The equation is basically a function of the annual erosion rate—the rainfall energy, both in terms of intensity and the size of the raindrop, the erodability of soil, the length of slope, the gradient of the slope and then management factors relating both to the crop and to the field. Those are important elements to arrive at the phosphorus index.

In terms of distance from watercourses, these are also calculations that have to be taken into account. If there's a watercourse present on the farm, the calculation there is a function, again, of soil texture, the field slope within 500 feet of that watercourse, the application method and the type of manure. In this example, if we've got a clay loam soil with a 3% slope, that would present moderate runoff potential, and an MDS, a minimum distance separation, from that watercourse of 75 feet would be indicated. However, if phosphorus were being applied above the rate of crop removal, then the MDS would be increased to roughly 100 feet. But again, that's a calculation that is based on the particulars of that particular field.

Finally, the usable acres—and this again is a function of the MDS from watercourse. If we had a 25-acre field and there was a watercourse that was 700 feet long travelling through that field, then a 100-foot setback would calculate out to 1.6 acres. That would be roughly two acres that are not available for application. It has been taken out of the field by way of setback from a stream and, therefore, with those 25 acres you would only have 23 acres available for the application of manure.

The final slide in terms of responsible nutrient management is that manure should be applied in rotation. It's not always necessary to apply manure to every field

every year, but of course that would be based in part on the crop rotation. Supplemental fertilizer should only be used on an as-needed basis rather than on a standardized basis. There are situations where manure can provide all the requirements of the growing crop, and again that comes out through the calculation process. Whenever possible, manure should be incorporated and it should be incorporated as quickly as possible. A direct injection would probably be the preferred manner, but incorporation within 24 or 48 hours is also acceptable.

I can't emphasize enough the need to calibrate manure application equipment. Often people can go through a nutrient planning exercise, but if they don't have a good appreciation of just how accurately that manure is being applied in terms of gallons per acre, pounds per acre or what have you, they can't meet the requirements within their plan.

With winter application, there are situations where days of storage are not sufficient to get through the winter, and that's unavoidable, but generally we would advocate that people increase their days of storage in order to avoid winter application.

Buffer strips along waterways is a technique whereby the setback can be reduced. If you're filtering the nutrient through a vegetative buffer strip, again, that can be factored into those calculations. Finally, fall cover crops are also an excellent tool by which to reduce soil erosion and thereby reduce the amount of phosphorus that could be entering surface water as soil particles erode from a soil.

These are the elements—and again, remember that this is just for one field. A farmer with a 200-acre operation will have several fields, and the soil texture, soil slopes and lengths of slopes could vary on each of those fields. It's very complex, but at the end of the day it's also very accurate in terms of presenting the picture of that farm. Again, I think it's for that reason that Jack would suggest that a nutrient management plan is really what's fundamental to the legislation.

**The Chair:** Thank you, Mr Armitage. Mr Wilkinson?  
1720

**Mr Wilkinson:** This presentation was not meant to confuse; It was meant to put in front of the committee the degree of detail the farm community is willing to go to to try and meet the concerns of both environmental and non-farm people.

When we said we would like to deal with the variability of a farm in a nutrient management plan, it was important for you to see what degree of detail we're talking about. We're talking about balancing what crop will grow with the soil type, with the amount of commercial fertilizer added, the amount of manure added, the slope, the setback, dealing with those variables so you have some sense of assurance as a committee as to the degree of discipline, and not every farmer is going to enjoy this degree of discipline. They're going to view it as, "I've looked after my farm for the last 40 years. I haven't created a problem. Why are you, OFA and other farm organizations, encouraging and advocating this degree of



complexity?" and in some cases cost and paperwork that they'll have to undergo, and record-keeping.

We're thinking, so that we can maintain viable live-stock and commercial farm units in Ontario with the confidence of the consumer, we have been willing to self-advocate this kind of discipline among ourselves. We felt it was incredibly important, even though I know there was some glazing-over taking place; I appreciate that. But when you see the degree to which we're willing to look at balancing all that, we hope you'll have some sense of confidence when we say that the main thing of this legislation would be to require farmers to have nutrient management, and then we can deal on a micro-climate, micro-farm, a micro-soil level through this sort of application field by field, farm by farm, to meet standards that the province feels are appropriate to deal with surface and groundwater contamination and make sure they're comfortable and not overapplying. That's really why it's here.

We're happy to answer any questions, but we felt that if you didn't see the detail we're advocating, you would think we were just trying to snow you by basically taking the approach, "All we want is a nutrient management plan. Just trust us." There's a lot in here. This is the executive summary.

**The Chair:** Thank you, Mr Wilkinson. There are about five minutes remaining. We'll go in rotation.

**Mr Kormos:** The reference to snowing us was a very clear and specific choice of words. Let's get right to the alternative.

I agree it's incredibly complex. I'll say that here and now. As a matter of fact—honest—I read this, because I knew this was going to be the slide presentation, before you folks got here, because there was a gap after the minister made his presentation. Again, I agree that that's a complex, sophisticated approach that is probably considered by many farmers, especially smaller ones, as pretty demanding and pretty onerous and entailing the sort of cost of only the actual calculation process and the diagnostic and analytical process. I simply wanted to state that clearly.

**Mr Wilkinson:** Thank you.

**Mr Kormos:** I'm surrendering.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** I'm sorry that I missed the glazing presentation but I sat, along with Mr Peters, with the public hearings.

We don't have an awful lot of time, so I'm only going to make the comment that I believe in risk management, and I think that nutrient management planning is basically risk management. Some people expect that legislation and regulation will eliminate all the risks. There is no such thing that exists. I don't think it will ever exist.

For the record, I would also like to point out that there may be some difficulties with the farming community with regard to pollution. But I would also like to point out that for a number of years, for decades, municipalities have also been polluting with antiquated sewage treatment plants. Some of them don't have them and some of them are not up to snuff. I asked a question of different

municipal leaders during the hearings as to what types of sewage treatment facilities they had in their own communities. Some municipal leaders did not know what types of sewage treatment facilities they had, and most of them said they did not have a tertiary system. Consequently, I think we have to manage what's going on on the farm, but there's also the rest of the story that should be looked at.

**Mr Peters:** In the nutrient management plan, where do biosolids fit? Let's say your particular farm also chose—I can think of some down my way—John Lyle, who gets the sludge from the city. Does anybody test? You talk about the composition of the manure. Just skimming through quickly, I didn't see anything about it, but where do biosolids fit into somebody's nutrient management plan if it was their choice to apply them on their land?

**Mr Wilkinson:** Our view is that they would have to fit in the same as either supplemental commercial and/or manure in particular, that there would have to be analysis done on it that would give an estimate of the degree of KNP as part of that ratio. Right now they are tested for heavy metals, and there is a process to test for that. Our view is, they would have to fit in exactly the same way.

The goal here is that when you add up all the nutrients that you apply on your per-acre crop, it either has to match the crop that's growing and the nutrient requirements of that crop or you have to entertain a process to deal with that so that we cannot have overapplication. Sometimes it does get to be a little bit difficult, when you get to the detail, that there are some types of manure that are high in particular nutrients and there are some soils that are particularly high, as in certain clay loam soils of high levels.

That's where the balancing at the end—where we've got to be careful that we don't overapply things like biosolids and manure, whereas you can balance that better with commercial fertilizers. You can go in with the soil sample and get the exact blend that you require from your commercial fertilizer outlet that will match up and take those variations. That's why those over- and under-calculations are part and parcel of it that will vary by the particular soil type.

Clearly, we would have to test those to the same degree. They would have to meet the same standards, in our view, or you run the risk of doing the right thing on the farm side, on commercial and manure, only to have the biosolids and the other applicators out there in fact creating problems that might be on the same watershed.

This really is to hold up to people like Mr Miller, the Environmental Commissioner, and the federal counterpart that we're advocating a traceable system of knowing what we're doing out in the countryside, so that when the next report comes out, he'll be able to see that the farm community is putting a standard out there that they're willing to be judged by. If the science shows five years from now that we have a particular problem that we thought was well in hand, we'll have a history, a standard and a scientific base to which we'll make changes for



future applications. We think we're being very proactive here in this regard and hence will be the request for the government to help us to meet new capital upgrades, both in equipment and storage.

**Mr Peters:** You made reference to companies out there—my cousin Dale, who's not my cousin, but Dale Peters, whom we joke—

**Mr Wilkinson:** It's the free advertising section.

**Mr Peters:** I'm not saying my cousin, Dale, works for me. He's not my cousin.

Are there enough people like Dale and others in the business that we can have everybody working toward the development of a nutrient management plan, or is this potentially going to be a problem, that there are not enough qualified companies out there?

**Mr Wilkinson:** First of all, even though the minister indicated that OMAFRA and the legislation allows for third party on some of this, we're still working on the premise that the Ministry of Agriculture and Food and the government in general will see the need, particularly in the early days, to be there to help up to 60,000 individual entrepreneurs to move to a new, more rigorous provincial standard. We do honestly—and this is not tongue-in-cheek at all—hope that the ministry will see fit to have the capacity of that third party review to help people with the nutrient management, to help them move to the new bar.

A lot of this is going to be transfer of a really new way of thinking for a lot of producers. They may feel very comfortable that they have done it right on their farm because they view that they haven't polluted their groundwater, they haven't polluted a stream, and so their

question is, as I say again, "Why is this for me?" This really is for the non-farm resident, to assure them that we're doing it right.

I think what a lot of farmers have done intuitively for the last 30 years on their farms, judging the nutrient application rate and varying it by soil, only putting it on once every three years, doing all those good things, they're now going to have to quantify. We want some assistance within the ministry to help us particularly in those early days versus everybody feeling they have to hire a consultant to meet the new standard. We think there will be particularly complicated livestock operations that are close to urban areas that are maybe peaking out on their land base that will be quite happy to hire a consultant for the speed and the detail that will be required, but we feel a lot of that expertise will need to be, hopefully, still housed in the ministry.

**The Chair:** Mr Wilkinson and Mr Armitage, thank you for coming forward again.

I would remind our subcommittee that we're meeting tomorrow afternoon at 3:30 with respect to nutrient management. The next order of business would be clause-by-clause and considering any amendments that all three parties would bring forward.

Next Monday and Tuesday, October 29 and 30, this committee deals with Bill 101, the Student Protection Act. For that particular bill there's a deadline for any names you wish to contact for potential deputations. The deadline would be tomorrow at noon, if you wish to submit any names to our clerk.

Seeing no other business, committee adjourned.

*The committee adjourned at 1732.*











## CONTENTS

Tuesday 23 October 2001

<b>Brain Tumour Awareness Month Act, 2001, Bill 14, <i>Mr Wood</i> / <b>Loi de 2001 sur le Mois de la sensibilisation aux tumeurs cérébrales</b>, projet de loi 14, <i>M. Wood</i>.....</b>	<b>J-533</b>
Brain Tumour Foundation of Canada; Toronto Brain Tumour Support Group .....	J-533
Ms Katheleen Ellis	
Miss Jackie Yates	
<b>Nutrient Management Act, 2001, Bill 81, <i>Mr Coburn</i> / <b>Loi de 2001 sur la gestion des éléments nutritifs</b>, projet de loi 81, <i>M. Coburn</i> .....</b>	<b>J-538</b>
Ministry of Agriculture, Food and Rural Affairs .....	J-538
Hon Brian Coburn, Minister of Agriculture, Food and Rural Affairs	
Ontario Federation of Agriculture.....	J-541
Mr Jack Wilkinson	
Mr David Armitage	

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale PC)

Ms Marilyn Mushinski (Scarborough Centre / -Centre PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr Steve Peters (Elgin-Middlesex-London L)

#### **Also taking part / Autres participants et participantes**

Mr Brian Coburn (Ottawa-Orléans)

Mr Bob Wood (London West / -Ouest PC)

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Ms Elaine Campbell, research officer, Research and Information Services

Mr Michael Wood, legislative counsel

A2 ON  
C14  
577

Communications  
Publications



J-21

J-21

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 29 October 2001

# Journal des débats (Hansard)

Lundi 29 octobre 2001

**Standing committee on  
justice and social policy**

Subcommittee report

Student Protection Act, 2001

**Comité permanent de la  
justice et des affaires sociales**

Rapport du sous-comité

Loi de 2001  
sur la protection des élèves

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Monday 29 October 2001

*The committee met at 1527 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Toby Barrett):** Good afternoon, everyone. Welcome to this regular meeting of the standing committee on justice and social policy. We have several orders of business and we have several delegations. Our first order of business is to consider the report of the subcommittee, dated October 24, 2001.

**Mr John O'Toole (Durham):** I would like to submit the report of the subcommittee.

"Your subcommittee met on October 24, 2001, to consider the method of proceeding on Bill 69, An Act to protect victims by prohibiting profiting from recounting of crime, and recommends the following:

"(1) That on November 6, the committee conduct its clause-by-clause consideration of the bill;

"(2) That amendments for the bill should be provided to the clerk by November 2 at 12 noon."

**The Chair:** Is there any debate or comment on Bill 69? Are there any amendments with respect to Bill 69?

**Mr O'Toole:** If I may continue—

**The Chair:** I think I should do this bill by bill. I ask the committee, are we in favour of Bill 69, the report?

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** You mean the subcommittee report on Bill 69?

**The Chair:** Yes, the report from the subcommittee on Bill 69. Are we in favour? Carried.

**Mr O'Toole:** "Your subcommittee met on Wednesday, October 24, 2001, to consider the method of proceeding on Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other acts, and recommends the following:

"(1) That on November 27, December 3 and December 4, the committee conduct its clause-by-clause consideration of the bill. If the committee finishes its consideration of the bill on or before December 3, the committee will use December 4 to begin clause-by-clause consideration of Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act;

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Lundi 29 octobre 2001

"(2) That amendments for Bill 81 should be provided to the clerk by November 23 at 12 noon."

**The Chair:** Thank you for the subcommittee report on Bill 81. Is there debate on that order of business?

**Mr Garfield Dunlop (Simcoe North):** Just some comments I'd like to read into the minutes, Mr Chairman. All three parties have generally accepted the concept of the bill and agree that the people of Ontario require strong rules regarding nutrient usage in our province. It is important that the bill move forward through the clause-by-clause phase to ensure that appropriate time is given for second and third readings in the House this fall.

This bill has had numerous consultations. This committee has held 10 days of public hearings, and OMAFRA was also very forthcoming with a public information session. We have received calls from a variety of municipal representatives, farm and environmental organizations in this province that realize the need for a bill of this nature and support quick passage through the House.

Opposition members have expressed a real concern about the lack of regulation associated with this legislation. It is imperative that we move forward with clause-by-clause to ensure that regulation will develop as soon as possible.

I encourage all members of this committee to consider that this bill is a vital component to ensuring the future sustainability of rural Ontario, and all members of this committee, I'm sure, realize the importance this bill will play in shaping the future of our environment, our rural communities and farming practices in general across our province.

**The Chair:** Any further discussion or debate on the subcommittee report?

**Mrs McLeod:** So we're staying with the subcommittee report as presented, with three days of clause-by-clause?

**The Chair:** I asked the question and there are no amendments to this one. Does the committee find this subcommittee report accurate and agree with it? Carried.

**Mr O'Toole:** "Your subcommittee met on Wednesday, October 24, 2001, to consider the method of proceeding on Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act, and recommends the following:



“(1) That on December 10 and 11, the committee conduct its clause-by-clause consideration of the bill. If the committee is not busy on December 4, the committee will conduct its clause-by-clause consideration of the bill on December 4 and 10;

“(2) That amendments for the bill should be provided to the clerk by November 30 at 12 noon.”

**The Chair:** Is there any further debate or discussion on the subcommittee report for Bill 86? All in favour of this report? Carried.

**Mr O'Toole:** “Your subcommittee met on Wednesday, October 24, 2001, to consider the method of proceeding on Bill 87, An Act to regulate food quality and safety and to make complementary amendments and repeals to other acts, and recommends the following:

“(1) That the committee schedule public hearings in Toronto on November 19 and 20, 2001—”

**Mrs McLeod:** Mr Chair, I'm open to having the recommendations tabled as entered before us, if you like.

**Mr O'Toole:** Are they to be read into the record?

**The Chair:** The clerk has advised me that we should bear with Mr O'Toole as he reads them into the record.

**Mrs McLeod:** That's fine.

**Mr O'Toole:** I'll try to speed up, but it is all time on task.

“(2) That the committee conduct its clause-by-clause consideration of the bill on November 26, 2001;

“(3) That the clerk place an advertisement on the Ontario parliamentary channel and on the Internet. If possible, an advertisement will also be placed in the four Toronto English dailies and in the largest Toronto French newspaper, and in Ontario Farmer. The advertisement will indicate that application for the reimbursement of travel expenses can be made in writing by submitting a claim to the clerk;

“(4) That the deadline for making a request to appear before the committee be November 9 at 12 noon;

“(5) That the deadline for submitting written submissions be November 20 at 12 noon;

“(6) That a briefing by the minister or ministry is not necessary;

“(7) That each of the three parties may make opening statements for five minutes each;

“(8) That staff be present in the committee room to answer questions posed by any committee member;

“(9) That groups be offered 20 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations. If there are more potential witnesses than there are time slots, groups will be offered 15 minutes in which to make their presentations;

“(10) That all witnesses be scheduled if time permits. If there are more potential witnesses than there are time slots, the subcommittee will meet to determine the priority for scheduling their presentations;

“(11) That each party can submit a list of potential witnesses to the clerk by Wednesday, November 9, at 12 noon;

“(12) That the research officer prepare a summary of recommendations and obtain relevant information from the Ministry of Agriculture, Food and Rural Affairs;

“(13) That there be no opening comments at the start of clause-by-clause consideration of the bill;

“(14) That amendments for the bill should be provided to the clerk by November 23 at 12 noon;

“(15) That the clerk be authorized to begin implementing these decisions immediately;

“(16) That the information contained in this subcommittee report be given out to interested parties immediately;

“(17) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of this bill. The Chair will call another subcommittee meeting if needed.”

**The Chair:** Thank you for the subcommittee report on Bill 87. Is there any debate on the report or any amendments at this time? All in favour of the subcommittee report? Agreed.

That concludes the subcommittee report.

**Mr Peter Kormos (Niagara Centre):** If I may raise one other matter of business, and I only had a chance to speak very briefly about it with Mr Dunlop, as parliamentary assistant to the Minister of Education, and I spoke earlier in the day to the Minister of Education. We understand that the committee has already adopted the subcommittee report prescribing two days of hearings and a final third day of clause-by-clause consideration.

Mr Martin has reviewed the list of presenters and brings to the committee's attention an unfortunate omission, appreciating that this could have been dealt with and should have been dealt with in a more timely way in terms of filing these. He speaks specifically of the Children's Aid Society of Ontario and the Children's Aid Society of Algoma. As most members of this committee will know, there's some historical basis for that interest arising from Sault Ste Marie.

I'm asking the committee to consider what would be a modest proposal, a motion that notwithstanding that the third day of committee focus on this bill has been set for clause-by-clause, the committee consider indulging not only Mr Martin but, more importantly, children's aid society representation—because as you'll see from the other two days of presenters, there's none of that—if the committee would indulge these people for a 20-minute slot at the beginning of clause-by-clause, effectively next Monday.

**Mrs McLeod:** Looking at tomorrow's agenda, there's a 4:30 to be confirmed. If that is not confirmed, I'm just wondering whether it could be slotted there.

**Mr Tony Martin (Sault Ste Marie):** I spoke to the children's aid society today when I found out we were actually going to committee today and tomorrow. I had spoken to them in the Soo a week ago and shared that with them.

Some of you will remember that I brought forward a private member's bill to change the child and family welfare act to give the children's aid society the power

they need to investigate abuse of children where institutions are concerned, which died on the order paper when the government prorogued.

We want to take a look at this bill. We think it's a good bill and will do some things that are necessary. But there is some significant interface between police and the children's aid society. Rather than set up something, without hearing from the children's aid society, which may create some difficulty for them—we might get responsibilities clashing—the CAS should be able to come in.

I'm going to try to get them in here for tomorrow if I can. But failing that, I just think it's really important that the committee hear from the children's aid society where this bill is concerned so that we, as a group who will ultimately pass this legislation, understand what we're doing and how those two groups will or will not be able to interface and actually do the job they're charged with doing.

We all know the police are a group in this bill who are charged with some significant responsibility. We also know that the mandate of the children's aid society is the protection of children. They were mentioned and centred out in the Robins report as having fallen down in that instance and perhaps had not done what they could have done. They're saying the reason they couldn't, even if they had been brought in—and they weren't—would have been limited because of legislation and parameters surrounding their role and what they can do.

It just seems to me that it would be smart of us, if we can at all, to—

**Mr Dunlop:** We agree with it.

**Mr Martin:** You agree with it? OK. Sorry. No more argument.

*Interjections.*

1540

**The Chair:** I will mention, further to that—we're referring to November 5. The clerk also informs me, and looking at the schedule, that there's an opportunity tomorrow as well.

**Mr Martin:** I've got a call coming back tonight from them. I've got a call coming in tomorrow morning. If they can be ready for tomorrow afternoon, we can perhaps fit them in. If not, is it OK, as Mr Kormos has suggested, that we hear from them before clause-by-clause, even though that may be a bit late?

**Mrs McLeod:** Informally, my main suggestion would be if they possibly can do it tomorrow, then that gives us a chance to consider their input before clause-by-clause.

**Mr Rosario Marchese (Trinity-Spadina):** It would be better.

**The Chair:** As I understand it, we're formally changing the subcommittee report, so I would ask for a motion from our sitting members.

**Mr Marchese:** I move that we slot in the Ontario Children's Aid Society and Algoma Children's Aid Society to make a deputation, if it works, on October 30 for the 4:30 slot, if possible, and if not, on the Monday following.

**The Chair:** Thank you. We have that motion before us. All in favour? Those opposed? I declare that motion passed.

## STUDENT PROTECTION ACT, 2001

### LOI DE 2001

## SUR LA PROTECTION DES ÉLÈVES

Consideration of Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students / *Projet de loi 101, Loi visant à protéger les élèves contre les mauvais traitements d'ordre sexuel et à prévoir autrement leur protection.*

**The Chair:** Our next order of business is delegations with respect to Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students. From our agenda, we have two delegations.

### CANADIAN RED CROSS, ONTARIO ZONE

**The Chair:** I ask the Canadian Red Cross, Ontario zone, to please come forward to the witness table. Good afternoon. We welcome you. We would ask you to give us your name for the purposes of Hansard.

**Ms Debra Bellamy:** My name is Debra Bellamy. I'm with the Canadian Red Cross.

**The Chair:** Thank you. We have 20 minutes for your comments.

**Ms Bellamy:** Chair, committee members and members of the public, thank you for the opportunity today to offer our input into Bill 101. My comments today are in support of this legislation and also to suggest amendments which would strengthen the legislative ability to protect children from sexual abuse and other forms of abuse. I have given the clerk copies of my presentation for you for after.

Red Cross RespectED violence and abuse prevention program focuses on the prevention of abuse through consultations on policy development and delivery of prevention education workshops which provide early identification of abuse and immediate help for those who disclose. I believe that Bill 101 provides an opportunity to support these goals through legislative means.

While the definition of "sexual abuse" in Bill 101, part II, clauses 2(a)(b) and (c), is a good beginning to creating a definition of "sexual abuse," I believe it is incomplete. The definition in the proposed legislation does not acknowledge or recognize the special relationship of trust and moral authority teachers hold over students, nor does it create a clear, broad definition in order to avoid excusing harmful behaviour as a result of loopholes in law.

October is Child Abuse Awareness Month. It's the responsibility of all adults who are responsible for the well-being, safety and human dignity of children to be aware of the ways in which children can be harmed and to prevent this harm. It's my understanding that Bill 101 is specifically written with the intent to prevent the abuse



of students, and as currently written is applicable to certified teachers. Non-certified teachers and other adults are placed in the same position of trust and authority over students in educational institutions throughout Ontario as are certified teachers and therefore are worthy of significant consideration for inclusion in both Bill 101 and other applicable legislation.

I will refer throughout this presentation to the recommendations of Judge Sydney Robins in his report called *Protecting our Students*. The recommendations in this report would be an important component in any legislation regarding protection of students. In his report, Robins proposes four general ways to identify and prevent sexual abuse in our schools which are worthy of consideration for inclusion in Bill 101. In this presentation I will address two of these points and suggest an expanded definition of "child abuse."

Robins states the need to "create a clearer, broader definition of sexual misconduct to spell out what is prohibited and to ensure some types of sexual abuse are not trivialized." Judge Robins suggests the use of the broader term "sexual misconduct" and that any definition thereof be based on, but not limited to, the Criminal Code.

Specifically, Robins recommends the inclusion of:

—Section 151: sexual interference, which refers to touching any part of the body of a person under the age of 14 years for a sexual purpose.

—Section 152: invitation to sexual touching, which refers to inviting or inciting a person under the age of 14 years to touch the body of a person who invites for a sexual purpose.

—Section 153: sexual exploitation, which refers to when a person who is in a position of trust or authority toward a young person or is a person with whom the young person is in a relationship of dependency, if they touch the body of a young person or invite that young person to touch for a sexual purpose—that's sexual exploitation. A young person means a person between 14 but under 18 years of age.

In addition, Robins recommends the inclusion of the following:

—Sexual harassment: objectionable comments or conduct of a sexual nature that may affect a student's personal integrity or the security of the school environment. Such comments or conduct may not be overtly sexual, but the impact is personal embarrassment to the student. This definition of sexual harassment is based on the Ontario Human Rights Code with specific application for teachers. Robins indicates that in a teacher-student relationship, the question of whether conduct is or is not unwelcome is irrelevant. Robins states that it is no defence to argue that a student welcomed, asked for, consented, or failed to object to harassing behaviour. The teacher, not the student, bears responsibility for the teacher's conduct.

Red Cross RespectED violence and abuse prevention programs for youth reference that abuse is "Not Your Fault." Due to the imbalance of power between a teacher

and a student and the teacher's position of authority and trust, a student is not in a position to give consent.

—Sexual relationships: The inclusion in legislation of reference to any sexual relationship with a student, or with a former student, under the age of 18 and any conduct directed to establishing such a relationship as sexual misconduct would clearly define intimate letters from teacher to student, personal telephone calls, sexualized dialogue through the Internet and suggestive comments as non-contact sexual abuse and therefore prohibited. This definition applies to a teacher's own students or other students if the behaviour may affect the personal integrity or security of the student or the school environment.

Robins states that "including the concept of sexual relationship as a form of misconduct addresses the fact that a teacher must respect professional rules, in addition to criminal and civil rules." This higher standard of conduct has been upheld by the Supreme Court of Canada. A teacher's sexual relationship with a student should be prohibited under any circumstances, including if the student has reached the age of consent, if the relationship occurs outside of the school year and even if the relationship is with a former student who is still under age 18. Robins recommends that definitions be based on existing laws and the specific context of the teaching profession.

Another omission of Bill 101 is the absence of definitions for physical, verbal, psychological or emotional abuse. However, section 1 of the regulations made under the Ontario College of Teachers Act refers to the terms physical, verbal, psychological and emotional abuse as professional misconduct applicable to teachers, without a clear, broad definition of these terms.

A key aspect of prevention activities is to ensure a common language and a clear understanding of basic definitions of illegal and prohibited behaviour. This will ensure the safety and human dignity of students.

I therefore propose that Bill 101 be amended to include clear, broad definitions of all types of abuse and harassment to better protect students and to ensure that teachers are aware of the behaviours which are defined as professional misconduct and can govern themselves based on this knowledge.

#### 1550

The education and training of teachers as to the definitions of abuse, identification of abuse, proactive prevention measures and the scope and application of any laws is critical both to preventing abuse before it happens and ensuring that professionals who have responsibility for children can both identify and respond to suspicions that a child is at risk of harm. This education should be included in initial teacher training and will require legislative changes.

In the March issue of *Professionally Speaking*, the Ontario College of Teachers states that "one important way to influence [certified] teachers' understanding [about sexual misconduct] is through the college's authority to accredit professional learning programs and courses that would include specific content on sexual



misconduct for new and experienced teachers.” If learning about definitions of abuse, impact and indicators of abuse, proactive prevention and how to respond to disclosures was part of the teachers’ accreditation requirements, it would begin to address the recommendation of Judge Robins to educate professionals as a way of identifying and preventing abuse and/or misconduct. Legislative changes would assist this by giving professional accreditation standards clear parameters and a legal framework with which to approach this painful community and societal issue.

**The Chair:** Thank you very much. We have several minutes for each party for any comments or questions.

**Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington):** I don’t have any questions. I do appreciate the perspective you have presented. A number of the concerns you have raised have been raised by our education critic, Gerard Kennedy, particularly with regard to the issues you raised about uncertified teachers, as well as the definition of “sexual abuse” and how the term “sexual misconduct” might be a more appropriate term to include in the legislation. We very much appreciate that you’ve taken the time to come and share your thoughts with us today. I thought it would be important for you to understand as well that there are members of the Legislature who would be very prepared to advocate the amendments you’ve proposed today.

**Mr Marchese:** Thank you for your presentation. A couple of questions. On the issue of prevention, I’m anticipating that the College of Teachers will have some suggestions as to what it will propose by way of professional development vis-à-vis prevention. I’m assuming that boards of education will also want to speak to the minister about what they can jointly do, because some of it will involve some money. I’m expecting the College of Teachers and boards to say to the government, “Yes, we want to work with you. We want to look at prevention.” My sense is that something will happen. Do you think something might happen, or do you believe we should prescribe it in the way that you were suggesting? Your suggestion was to link recertification to professional development as it relates to understanding sexual abuse, how it happens and doing early intervention. Do you think it can happen on its own, or are you suggesting that what you suggest is the only way to do it?

**Ms Bellamy:** We do educational work with teachers. In our experience, many times they’re aware that they have a responsibility to report child abuse, as the Child and Family Services Act dictates. However, they are not aware many times of what it is, the issues, how to deal with it, and therefore they don’t deal with it. The individual schools and the individual boards of education determine whether or not they’re going to include this. I’m suggesting that perhaps something that was standardized across the board through legislation might be helpful.

**Mr Marchese:** I understand that and I agree with you. Some teachers won’t disagree with you either, many won’t disagree with you, because I think they understand

that understanding this issue is not easy and that, yes, some professional development would be helpful. How you negotiate that within the system is a matter of some controversy, as you know, because this government cut professional development days from nine to four and that has created some difficulties for the system. My assumption is that they would want to negotiate something because they do want to understand how it happens and want to be able to identify it when and if it is happening. I don’t think teachers will disagree with you that they would like to have it. It’s just a matter of how, I guess.

**Ms Bellamy:** The Child and Family Services Act as it stands, and the legislation now, provides guidelines for reporting and identifying child abuse. However, there are still many situations, as you’re aware, and from the Robins report, where it is not happening. Therefore, I feel that legislation needs to be strengthened to allow for that and to ensure that it happens, because, unfortunately, while the negotiations are going on, there are children who are still being abused.

**Mr Marchese:** Sure. You raised another point and didn’t comment at length, but you said that the government of course isn’t forcing those teachers who are not certified in the private system to be subject to this law. The point you make, that I made as a critic, is that they’re teachers. Students are under their care. They may not have the label “certified,” but they’re teaching. That means that young people are subject to potential abuse and they won’t be covered by this law. Do you want to elaborate on your need for the government to find a way to make sure that these people are part of this law, or do you just want to leave it?

**Ms Bellamy:** I’ll just elaborate briefly. Any legislation put in place to protect students has to consider every adult who has access to those students in the school system to ensure that children are protected fully.

**Mr Dunlop:** First of all, thank you so much for making a presentation today on this very important bill. I have a question I want to read out to you, OK? You raised concerns regarding the definition of sexual abuse, particularly its inability to address the breach of trust involved in the act of sexual abuse. Are you aware that the legislation we have proposed deals specifically with the teacher-student relationship and is not limited to time or place of the incident of sexual abuse, but rather the inappropriateness of the conduct wherever it may happen and no matter how it may be perceived by the student or the teacher? I think this specifically deals with the breach of trust you so eloquently referred to. By referring to behaviour and not the perception of the behaviour, have we not captured that?

With regard to clear and broad definitions, are you not aware of the professional misconduct regulation under the Ontario College of Teachers Act? You may wish to refer to this to see how far the broad definition of professional misconduct definitions do go. We feel at this time that the definition is captured. Have you got any further comments on that?

**Ms Bellamy:** In the Ontario College of Teachers Act, my understanding is that there’s one line where it refers



to professional misconduct, and there are several different categories of professional misconduct. But to do with abuse, there is one line that refers to physical, verbal, psychological, emotional abuse, sexual abuse, as professional misconduct. However, it does not define those terms. For prevention activities to be successful, I believe that everyone has to have a clear, common and consistent understanding of what the terms mean and govern themselves accordingly.

**The Chair:** On behalf of the committee, we wish to thank you, Ms Bellamy, for that presentation.

Before we proceed, it's my pleasure to introduce Don Forestell. Give us a wave. Don is assistant clerk with the New Brunswick provincial Legislature in Fredericton. Welcome.

#### ONTARIO PARENT COUNCIL

**The Chair:** I now wish to call forward our next delegation, the Ontario Parent Council. Good afternoon, sir. We would ask for your name for the purposes of Hansard, and we have 20 minutes.

**Mr Greg Reid:** Good afternoon. My name is Greg Reid. I'm chair of the Ontario Parent Council. Mr Chair, committee members and members of the public, we are very pleased to have the opportunity to speak to you today about Bill 101. The Ontario Parent Council has taken the position that it is the right of students in publicly funded education and it is the right of parents of students in publicly funded education to have the confidence and trust, when they send their children to school each day, that every possible precaution is being taken to ensure their safety in the classroom and beyond the classroom, for that matter.

1600

We are very pleased to speak to some of the provisions of this bill. In particular, I'd like to make comment about some of the highlights. We feel that the bill will provide a comprehensive definition of sexual abuse so that students are better protected from sexual harassment and sexual assault. Providing this definition is very important to parents, because in communicating with our own children, in talking to our children and the students, it is very important that we be able to school our own children as to what the definitions of abuse are and what we would hope they would communicate to us if they did ever encounter an adversarial situation in the school with regard to an act of this nature.

One of the other highlights of the bill on which we'd like to comment is that a situation where a certified teacher in a school has been charged with a sexual offence against a student would now have to be reported, under the provisions of this bill, to the Ontario College of Teachers by the employer. Public schools, independent schools, tutoring companies and other organizations will be required to do so if they employ teachers certified by the Ontario College of Teachers to instruct students. We feel this is a very important issue in that the report of Justice Sydney Robins on sexual misconduct in Ontario

schools obviously identified loopholes that allow for reporting of incidents of this nature to be bypassed or to go unreported. We feel it is very important that these offences be complete and well defined and that reporting of them not be precluded from parents' eyes in terms of their ability to know what's going on in the schools on an ongoing basis.

One of the other provisions of the bill is that teachers charged with sexual assault in a publicly funded school would be removed from the classroom. We feel this is something where, if we are to err in addressing issues of a safety nature for the children in the classroom, we should err on the side of caution. The specific provisions of this bill that would remove a teacher having been charged with a sexual assault from the classroom would go a long way toward satisfying parents and assuring them that everything is being done to protect the children.

Another provision would be the employers and the Ontario College of Teachers being required to share information about disciplinary action against certified teachers. This would help prevent a teacher from moving undetected to another school if he or she has been disciplined or charged with a sexual offence against a student. It would also help prevent a teacher in this situation from quitting and moving undetected to a job at another school. This speaks to closing the loopholes that have existed in the past and that Justice Robins identified in his report on student protection and sexual misconduct in Ontario schools. Although we are well aware as parents that incidents of this nature are very few in number, even one is absolutely abhorrent to us. By closing off these loopholes, if we can prevent even that last one from taking place, it is very important to us.

Finally, the last highlight of the bill that I'd like to speak to is with regard to clarifying that teachers are not required to inform their colleagues when making a report about them with regard to sexual abuse. The Minister of Education will be working to extend all this, to the best of our knowledge, to all situations where a student may be at risk of potential harm. This speaks to being transparent and to being aboveboard with information, particularly in being transparent such that parents can have access and have that level of confidence that they have the ability to know of situations like this that have taken place in the school. This is something we really see as important, the transparency and the completeness of reporting of incidents of this nature.

With that in mind, once again, we have every confidence as parents in the teaching profession of Ontario and in its ability to provide our children with a safe and complete education, with safety of children being the primary goal. But this legislation, should it pass, in our opinion will go a long way toward closing some of the loopholes that exist and in making sure that everything possible is being done to make sure our children are safe in the classroom on a daily basis.

Thank you very much again for the opportunity.



**The Chair:** Thank you very much, sir. This gives us four or five minutes for questions or comments. We now, in rotation, go to the NDP.

**Mr Marchese:** Mr Reid, welcome. New Democrats support this bill. New Democrats rarely agree with this government on almost anything, so it might surprise you that we support this bill. I don't know. But it is one of those few bills that we find a good thing this government has done. In that context, I've got a couple of other questions. Are you here speaking for yourself or are you speaking for the council?

**Mr Reid:** Speaking for the council.

**Mr Marchese:** Does the council pass motions to that effect? Do they have motions they pass on a given bill and then you, as the chair, assume on that basis that you can speak on behalf of the council? How does it work?

**Mr Reid:** With regard to this specific bill, we passed a motion two meetings ago that basically said, knowing that this bill was under discussion, that the paramount interest of the Ontario Parent Council was in the safety in the children and that any legislation that was going to further the safety of children in the classroom was certainly welcomed by us.

**Mr Marchese:** But they know you're here, is my question.

**Mr Reid:** Exactly.

**Mr Marchese:** The other important question for me has to do with the private schools and the fact that we don't really know how many of those teachers are not certified. We suspect it's a great number. One of the criticisms we've had of this government and this bill, quite apart from the fact that we oppose taxpayers' dollars for private schools, quite apart from that—now that they have done that, we are arguing that given the kinds of things they are obligating public school teachers to do, the same obligation should apply to the private schools, particularly now that they have given public dollars to the private schools. In your view, should not the same rules apply to those teachers who are not certified in the private system? At the moment it doesn't. And are you not worried about that, if they don't make those changes?

**Mr Reid:** Put it this way. The Ontario Parent Council has no formal position at this time on the issue of tax credits for private schools. We see that as a completely different issue and something, really—it's rather questionable whether that's even part of our mandate, as we are a council struck to advise the Minister of Education on issues of parental concern in education. We have had comment from members, in general discussion, about that, that the issue of a tax credit is a financial issue and we shouldn't even be bothered with it.

I will, however, make the comment, the personal comment, that I've had comments from and I've asked a number of parents of children in private schools about how they feel about the fact that this extends mainly—now, to my understanding, there are areas of the bill that do deal with extending the provisions of Bill 101 to public schools, independent schools, tutoring companies

etc if they employ teachers certified by the Ontario College of Teachers.

1610

The comments I had back from three individuals with whom I spoke, all of whom have children in private schools, basically—and I can only restrict to that; I can certainly make no comment that this is by any means a pervasive thought through the province. But these three individuals all removed their children from publicly funded education and they believed they did so at their own risk in terms of what they would encounter down the road. In other words, they've taken a caveat emptor approach to the schools that they've selected and to placing their children in the private system. That being said, when I questioned them about this particular piece of legislation and said, "This may not extend to your school if the teachers at your school are not certified by the College of Teachers—"

**Mr Marchese:** They said caveat emptor.

**Mr Reid:** They said basically that they felt confident that within the legal system there were enough provisions for pursuing individuals who may subject children to abuse that they would not consider this to be an issue.

**Mr Marchese:** A follow-up. It worries me, given the introduction you gave, "the right of students to have the confidence that every precaution is to be taken for the safety" and whatever else you said; I didn't write everything down—in that context, one would assume that every parent would be worried about who might not be covered by such a law. I know you say they think they're covered, but how could they be covered if this law is intended to make sure that proper reporting happens and that there are appropriate measures taken against teachers who cause abuse against young people? My sense is that you and they would be worried about every young man and woman having the precautions and the safety of the law. Certified teachers in private schools are covered—yes, they admit that—but the others are not. Don't speak for the others but speak for yourself as a parent. What do you say to the fact that this law does not extend itself to those who are not certified? Are you not worried about that?

**Mr Reid:** Put it this way. Myself as an individual—both my children are in the publicly funded system and our commitment is to keeping our children in the publicly funded system and working to improve it as much as possible. If, in the total abstract, I were ever tempted to remove my children from the publicly funded system and place them in a private school, I would certainly be very proactive in seeking out a private school, number one, that had certified teachers, and also in ensuring that provisions of safety for the children within that school would be in place that matched the safety level that I feel confident about within the publicly funded system.

**Mr Marchese:** I understand that you as an individual parent would seek out whatever private school would have 99% of certified teachers. I understand that. But don't you want to send a message to the government members saying, "You now have a law that extends to



some, but some are not subject to that"? I'm surprised that you wouldn't yourself say to the government, "The law has to make sure that everyone is covered, because every teacher, certified or not, is a teacher and is in charge of looking after young people." You don't want to send them a message in that regard?

**Mr Reid:** I have no message to send to them because we basically are here to promote and be involved in publicly funded education. On issues of a private school nature, my general feeling is that it is a situation where you as an individual must take the individual onus to ensure that the private school you had entered into would be of a nature that it would provide the same or better levels of instruction, of curriculum, of safety for your children etc throughout the whole system. Personally, I believe in a system of caveat emptor in that regard.

**Mr Dunlop:** Mr Reid, I want to thank you very much for making a presentation this afternoon. You heard that the New Democratic Party will probably support this legislation. We thank you for that, and your input next week from the Algoma Children's Aid Society is important to us as well. You see, they're cutting taxes and everything else; they want to do all kinds of things like our government has done. We are really quite pleased about that.

**Mr Marchese:** Just trying to help you, Garfield.

**Mr Dunlop:** It's good of you to do that. We really appreciate the support you're giving for tax cuts and all those sorts of things as well.

I want to ask you a question about the Ontario Parent Council and the representatives on the council. I believe there are 20 members from across the province. I know you're here today speaking on behalf of the Ontario Parent Council, but can I ask you, what are those representatives, who are from all regions across the province, hearing about this bill and about the Robins report in general?

**Mr Reid:** When we discussed it at our council meeting, the general value statement we came up with was that if it truly does close any loopholes that may exist in the system—and obviously, Justice Robins handed down a report with 101 recommendations that he felt needed to be considered in addressing student protection within the schools—anything that would close those loopholes is a step in the right direction. We are just 20 parents from across the province. We are not lawyers, we are not legislators, we are not individuals with a tremendous degree of background in writing legislation or really, for that matter, commenting on legislation. To that extent, we see this and we see the clauses and the highlights we've seen of this bill and in reading through the bill—as well as the NDP and yourselves and I truly hope all parties—as a step in the right direction.

**Mr Dunlop:** As a government, we are trying to investigate options on addressing the uncertified teacher portion of the bill. I just want to make sure I'm clear on this. Each person who's on the Ontario Parent Council is on a parent council back in their own school?

**Mr Reid:** Generally, yes. One of the requirements of inclusion in membership in the Ontario Parent Council or being appointed to the Ontario Parent Council is that you be a representative or an active participant in areas of parental concern in your school community. Most members, if not all—and I say that because I don't know the results of the elections that just concluded at the end of the first week of October. I'm sure we'll be made aware of those by the time our next meeting rolls around. But most of our members have an extensive background in school council involvement in their community. I know one instance where we had a member who was on three different school councils with three children in different schools and in two different boards.

**Mr Dunlop:** So they are hearing from their local school council to bring that to the table when they come to your meetings?

**Mr Reid:** Yes. At this point, we have no formal information-gathering mechanism. It's basically an instance where 20 people are bringing the opinions they hear from the street, from the community, from the councils they participate in, the groups they participate in, and they're bringing their opinions to the table as such.

I might mention that we are launching a Web site, which I believe will be launched tomorrow, on behalf of the Ontario Parent Council that will, at first, provide information for parents, and there will be a component added to it in approximately two to three months that will allow us, in combination with a provision that was written into regulation 612 that governed school councils, to share a database created by the Ministry of Education with the names and contact numbers for each school council member and school council chair across the province so we would be able to bring more than 20 opinions to the table in whatever informal process they had. We would actually be able to put questions like this to each school council across the province, each school council member, and allow them input in that respect.

**Mrs Dombrowsky:** Thank you very much, Mr Reid, for your presentation. Just so I'm clear, you as representative of the Ontario Parent Council are not proposing any amendments to this legislation?

**Mr Reid:** No, we're not.

**Mrs Dombrowsky:** I have to say I'm rather surprised by that. While I understand the arguments you've presented about focusing on students in publicly funded schools, this legislation is about protecting children in Ontario. I'm surprised that the Ontario Parent Council might not have an opinion about the right of all children in the province, regardless of where they go to school, to be assured that any legislation that would apply to certified teachers in the public system would also apply to children in any other school setting where there may not be certified teachers. I'm rather surprised at that.

1620

You indicated in your presentation that you are confident that "the bill will provide a comprehensive



definition of abuse.” Obviously, if you heard any of the presentation earlier today, that term “sexual abuse” gives rise to some questions about whether that is as appropriate and effective a term as it should be. I would like to know how it is that you bring this confidence to this table today, that you are confident the bill will provide a comprehensive definition. What information do you have that in fact it will?

**Mr Reid:** We’ve been given every assurance, in speaking to and advising the minister and receiving comments back from the minister’s office, that we will be consulted along the way, as we have been on a number of different issues coming before public education. I’ve been with the Ontario Parent Council for the last three years now. In my experience, it has been in the last year or so that we’ve been extensively consulted and asked for our input along the way with regard to all major initiatives that involve parents and parents of children in schools.

**Mrs Dombrowsky:** Have you seen a draft of what the definition might look like?

**Mr Reid:** No, I can’t say I have.

**Mrs Dombrowsky:** With regard to the legislation to which you would propose no amendments, as representative of parents across the province—I’m a parent; I have children in the school system—do you have an opinion on the fact that this legislation does not include other individuals who are in positions of trust with youngsters? I’m thinking of educational assistants within classrooms, of volunteers within classrooms. Do parents in Ontario not have an opinion that these individuals should perhaps be considered in this legislation as well to ensure the safety of the children?

**Mr Reid:** Our understanding is that this legislation deals specifically with the teaching profession and that there are other initiatives underway that will discuss other non-teaching board employees, for example, some kind of system of police background checks for all employees of the board who come into contact with children, which would dovetail with what a lot of parents experience in their own volunteer aspect of inclusion in both school and—

**Mrs Dombrowsky:** But these individuals can have the same kind of contact with children as teachers. You’re suggesting that merely a police background check is sufficient for those individuals but that teachers are held to a different standard. What I’m hearing from people in my riding, from parents as well, so you can take this back to your table too, is that in many cases individuals who are education assistants have perhaps even more opportunity and are held in positions of even higher trust because they have responsibilities that present them in very private situations. There is a concern that these people would not be caught, and I’m surprised that as representative of parents in Ontario you would not have a comment or an opinion. You suggest to me that you’ve been told or assured by the government that these people will be considered or dealt with in other

ways. Have you received anything in writing from the government that gives that assurance?

**Mr Reid:** No. Again, we’ve been consulted by the government in terms of issues that have come to the fore and we have every confidence that that will be the case in the future.

Just to comment again, as 20 individuals from around the province who gather every four to six weeks and spend a weekend volunteering and discussing education issues and providing advice to the minister, we have no belief that we have all the answers, nor do we have the belief that we are truly capable at this point of representing every parent in the province. One of the first things I identified when I was appointed to the Ontario Parent Council was that it was simply 18 to 20 people bringing their opinions and not a broad range of parental opinion from across the province, which is why we’ve identified communications, two-way proactive communications, to improve the breadth of information we bring.

**Mrs McLeod:** You referred, I think—and I just want to be sure I’d understood correctly—to the importance of parents being made aware of situations in which there are charges or perhaps convictions against teachers. Did I misunderstand you in terms of feeling that there should be some information provided to parents?

**Mr Reid:** We believe that information of a nature as serious as sexual abuse in the school should be made transparent to the parental community, yes.

**Mrs McLeod:** Have you thought about how that might be done in a way which is—I think it’s a very complex area and I think there are situations in which rumours grow, to the alarm of parents and very much to the potential injustice to the teacher involved. I think the need for accurate information about what’s happening is important, both for parents’ reassurance and also in fairness.

**Mr Reid:** I couldn’t agree with you more.

**Mrs McLeod:** It’s also pretty delicate. Do you have a sense of how that could be done in a way which is reassuring to parents, gives them accurate information, but still does justice to what may just be allegation, if not rumour?

**Mr Reid:** I couldn’t agree with you more that where there is a lack of information, rumours definitely tend to grow. Particularly in the school community, the parental community, where there are rumours of things taking place and no facts for people to see about what has actually transpired or what hasn’t transpired, it leaves that opportunity, and that’s not a positive thing. Rumours with regard to issues like this are not generally positive. That’s why we would like to see some mechanism that would provide some level of transparency and some level of a factual presentation of what’s transpiring at the school level.

**Mrs McLeod:** It’s not here, though, right?

**Mr Reid:** No.

**Mrs McLeod:** And have you discussed that with the minister in your advisory capacity or had any indication that she may be looking at something along those lines?



**Mr Reid:** This is something where we want to take a look—and we won't have the opportunity for another three weeks till our next meeting—at the issue in detail. People having had the opportunity to go back to their school communities and discuss things, we'll definitely be providing further information for the minister.

**The Chair:** Mr Reid, we do wish to thank you for your presentation on behalf of the Ontario Parent Council.

**Mr Reid:** Thank you very much. If I can get a quick plug in, OntarioParentCouncil.org is starting tomorrow. We'd love to have the input of any parents from your constituencies.

**The Chair:** Thank you for that. The hearings on Bill 101 continue tomorrow at 3:30. I see no further discussion, so this committee now stands adjourned.

*The committee adjourned at 1628.*











## CONTENTS

Monday 29 October 2001

<b>Subcommittee report .....</b>	<b>J-547</b>
<b>Student Protection Act, 2001, Bill 101, <i>Mrs Ecker</i> / <b>Loi de 2001 sur la protection des élèves</b>, projet de loi 101, <i>M<sup>me</sup> Ecker</i> .....</b>	<b>J-549</b>
Canadian Red Cross, Ontario zone .....	J-549
Ms Debra Bellamy	
Ontario Parent Council .....	J-552
Mr Greg Reid	

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington L)

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Mr Rosario Marchese (Trinity-Spadina ND)

Mr John O'Toole (Durham PC)

#### **Also taking part / Autres participants et participantes**

Mr Tony Martin (Sault Ste Marie ND)

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Ms Elaine Campbell, research officer,  
Research and Information Services

A2.011  
XC14  
-577

Document  
Produit



J-22

J-22

ISSN 1488-9080

**Legislative Assembly  
of Ontario**  
Second Session, 37<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**  
Deuxième session, 37<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Tuesday 30 October 2001**

**Journal  
des débats  
(Hansard)**

**Mardi 30 octobre 2001**

**Standing committee on  
justice and social policy**

**Student Protection Act, 2001**

**Comité permanent de la  
justice et des affaires sociales**

**Loi de 2001  
sur la protection des élèves**



Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Tuesday 30 October 2001

Mardi 30 octobre 2001

*The committee met at 1539 in room 151.*

## STUDENT PROTECTION ACT, 2001

## LOI DE 2001

## SUR LA PROTECTION DES ÉLÈVES

Consideration of Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students / Projet de loi 101, Loi visant à protéger les élèves contre les mauvais traitements d'ordre sexuel et à prévoir autrement leur protection.

**The Chair (Mr Toby Barrett):** Good afternoon everyone. Welcome to today's hearings of the standing committee on justice and social policy. We have 20 minutes available for each organization.

ONTARIO PUBLIC SCHOOL BOARDS'  
ASSOCIATION

**The Chair:** Our first delegation will be the Ontario Public School Boards' Association. Good afternoon. We record this for Hansard, so we would ask you for your names and then you could proceed.

**Ms Liz Sandals:** I'm Liz Sandals, president of the Ontario Public School Boards' Association, and this is Gerri Gershon, who is the first vice-president. Thank you for the opportunity to address you today.

Bill 101, the Student Protection Act, provides increased protection to students from sexual abuse. It will come as no surprise to you that our association strongly endorses any legislative change that will assist school boards in protecting the students we serve.

By way of background, our association represents the interests of more than 1.5 million elementary and secondary students and more than half a million adult learners from all regions of the province. The association's mission is to promote and enhance public education for the benefit of all students and citizens in Ontario. Public district school boards and school authorities in Ontario provide every individual with equal access to educational opportunities, regardless of gender, race, religion, ethnicity, disability or place of residence, in English or in French.

The Robins report: OPSBA was very supportive of the appointment of Judge Sydney Robins to conduct a review and prepare a report on the issue of sexual assault in schools. His report, *Protecting our Students: A Review to*

Identify and Prevent Sexual Misconduct in Ontario Schools, has been well received by the members of our association. I had the opportunity to meet with Judge Robins on two occasions while he deliberated on his report. He was very open to our suggestions and advice and incorporated a number of our recommendations in his recommendations. We are most grateful to have had the privilege to meet with him and for the good advice he has given in his report.

When we look at the act, school boards recognize that they will have new obligations as a result of the legislation. As a result of the expanded definition of sexual abuse, boards will now have the obligation to file a report with the registrar of the Ontario College of Teachers when the following situations arise: first, when a board terminates the college member's employment or imposes restrictions on the member's duties for reasons of professional misconduct, including any form of sexual abuse; and second, if the employer intended to terminate or discipline, but the member resigned prior to the employer doing so.

Our association has raised these areas of concern in the past and we wholeheartedly endorse these new requirements. We strongly believe we must ensure that teachers found guilty of sexual misconduct are removed from the system and from the profession. Reporting requirements to the college will ensure that these teachers have a record and do not go to another district school board and potentially prey on other students.

OPSBA also approves of the changes to the Teaching Profession Act such that members who make adverse reports about another member need not provide him or her with a copy of the report. The old wording in the Teaching Profession Act has been a source of confusion and concern for teachers who wish to report a case of suspected sexual misconduct.

OPSBA also supports the new definition of "sexual abuse" contained in the legislation, as it provides a clearer definition than what currently exists. In particular, we are pleased the new definition makes it clear that any act of sexual abuse is unacceptable and removes any possibility of a defence of consent, as was previously the case when the victim was a senior secondary student.

There are instances, however, when circumstances arise that cannot be defined as sexual misconduct but are potentially very detrimental to our students. As Judge Robins wrote, "In cases of sexual abuse, the offender,



using his position of power and authority, may employ various methods to induce a child to be compliant and silent. Frequently, raw force is unnecessary. Often there is an engagement phase, during which the adult begins a period of grooming to cultivate a special relationship with the child."

It is very difficult for school administrators to determine if a relationship between a student and teacher amounts to grooming. While our association welcomes the tighter definition of sexual misconduct, we will continue to be vigilant in our protection of the students in our care and we will request additional assistance by way of legislative or regulatory changes to address this issue—that is, the issue of grooming—in the future if it becomes necessary, if we find that the new definition is inadequate.

There is, however, a significant flaw in this legislation. The application of Bill 101 to private schools is at best hit and miss. Private school teachers do not have to be members of the College of Teachers. As a result, the improved definition of sexual misconduct and tighter reporting requirements will not apply to the majority of teachers in private schools. As far as their continued employment is concerned, the College of Teachers is irrelevant.

Any of the disciplinary procedures that most private schools employ are not subject to the reporting requirements as stated in Bill 101. To be very specific, if a private school dismisses a teacher for reasons of sexual misconduct, that teacher can simply seek employment in another school. Conversely, if a teacher is dismissed for sexual abuse by a district school board and suspended by the College of Teachers, that teacher can continue to seek employment in Ontario's private schools.

Our association wants to ensure that all the potential loopholes in hiring sexual predators are closed. We would urge this government, which has chosen to support private schools with public funds, to subject them to the same rigorous standards that public boards are here to wholeheartedly endorse.

In conclusion, school boards across the province are extremely proud of the teaching and learning that happens in our schools every day. Our principals, vice-principals, teachers and support staff are exceptional and we would match them against any other jurisdiction in the world. We know that their work is exemplary. We also know that in very rare circumstances we have employees who abuse the privilege of working with children. We are grateful for this legislation in that it will help us protect the students in our care. School boards and the trustees who serve on them take the responsibility of protecting students very seriously and we will continue to do our utmost in that regard.

Thank you once again for the opportunity to appear before this committee. I would be pleased to answer any questions you may have.

1550

**The Chair:** Thank you, Ms Sandals. We have a little over three minutes for each party. We will go in rotation and begin with the Liberal Party.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** I have a couple of questions first, but I'm sure my colleague will have questions as well. I appreciated your referencing Judge Robins's judgment and indicating that there were areas of the definition of "sexual abuse" that are not dealt with in this act and that Judge Robins had recommended be included. I appreciate the fact that you're saying you'll come back if you think the definition needs to be expanded, because that's a concern we've had.

I also appreciate your raising the issue of private schools and the fact it is hit and miss. Isn't it a general problem with attempting to apply any kind of standards to private schools? Because there are no requirements for teachers to be certified, there are no requirements, therefore, for them to be members of the College of Teachers, so there is no regulatory body governing the standards for teachers. How can this act catch them when there's no other requirement? Who would you report them to?

**Ms Sandals:** The act has been written in an interesting way. Unlike most education legislation that applies specifically to district school boards, this particular set of amendments has been written so that anyone who employs a member of the College of Teachers would be subject to the requirements of the act; that is, they would have to report to the College of Teachers in a case of sexual abuse.

The problem then comes not with this specific act, which in our opinion has been fairly well written; the problem is that private schools are not required to employ members of the College of Teachers. So regardless of whether the person employed as a teacher happens to have credentials as a teacher, they're not required to be members of the College of Teachers. Because they're not members of the College of Teachers, they fall outside this act. It's being a member of the College of Teachers that is crucial for the purpose of this act.

The phrase has been used—I almost hate to bring it up, but the whole concept of "pass the trash," the problem of a sexual predator slipping away from one employer and scurrying off, almost under cover of darkness, to another employer to continue their bad deeds, can only be got at by the intervention of the College of Teachers, which has a larger jurisdiction than any one school or any one school board. It's the failure of any piece of legislation requiring private schools to employ members of the College of Teachers that puts private schools for the most part beyond the purview of this act, and therefore their students beyond the protection of the act.

**Mrs McLeod:** One of the issues that came up yesterday was from a representative of the Ontario Parent Council who questioned whether there should be some reporting back to parents, some information, at least, provided to parents. I wonder what you think. Obviously there's a fine balance here in terms of allegations versus convictions. At what point do you feel parents need to be involved and how should that happen?

**Ms Sandals:** In the case where a parent is the parent of the child who is directly concerned, then obviously because their child is part of the case, I think the parent in



that case would be fully aware of what is going on. It becomes a bit dicey under labour law in terms of protection of privacy of employees at the stage at which it's an allegation, although the act will require us to remove a person who has been accused from contact with students, and in fact in most cases school boards already do that anyway: when there is an allegation, we remove the teacher from any contact with students. I think the larger protection to the public at large comes when these incidents are reported to the college. If there is discipline resulting or the person is dismissed from the profession, that becomes a part of the public record on the public registry of the college.

**Mr Rosario Marchese (Trinity-Spadina):** I want to welcome you both and I want to say something publicly that I may not have done too often, and that is to congratulate the Ontario Public School Boards' Association for their articulate and spirited defence of public education.

With respect to private schools, you've identified a flaw that we have spoken to in the Legislature. Have you had any discussions with the minister, ministry staff, or political and/or civil servants about this oversight and how the government might deal with it?

**Ms Sandals:** I think the government and ministry staff are quite aware that we would see that this is the flaw in the legislation. In fact, when we submitted our presentation to Mr Hardeman on the subject of private schools, we were quite explicit in our presentation to Mr Hardeman in requesting that a private school should have to employ members of the College of Teachers, because if private schools were required to employ members of the College of Teachers, that would then take care of the flaw, the omission in the act.

**Mr Marchese:** What did they say to you?

**Ms Sandals:** We're still waiting to find out what the outcome is.

**Mr Marchese:** Really? Because clause-by-clause is on Monday.

**Ms Sandals:** Is it? Oh well.

**Mr Marchese:** And then it's over, pretty well.

**Ms Sandals:** It will be interesting to see where the tax credit regulation lands.

**Mr Marchese:** Don't hold your breath.

It's a problem, in my view, and you've stated it as well. How can a government simply allow that everyone be covered in the public system, but in the private schools, now that we have financed them publicly through taxpayers' dollars, how can they justify the fact that some teachers will not be subject to the law, which means that some students may not have the protection they seek through Bill 101? How can they justify this, is the question I've been asking, and it's really difficult to get an answer from them. Anyway, you are asking the same questions.

**Ms Sandals:** We're asking the same questions.

**Mr Marchese:** With respect to prevention, we had someone here yesterday from the Canadian Red Cross and they argued that we need to do more by way of prevention. I think what she talked about was the idea of

teachers taking courses in order to be able to identify early what it is they're looking for. So we talked about prevention. I'm assuming that the government is thinking about it as well and, once this bill passes, presumably they'll talk to you and the boards and the federations, generally speaking and individually, to talk about what else they could do with respect to preventive measures. Have you thought about that issue at all?

**Ms Sandals:** I think where prevention has come into it is that the whole issue of identifying sexual abuse of children is obviously a much larger one than simply dealing with teachers. In most instances where there is sexual abuse, it's not by a teacher, it's some other member of the community. I think you will find that most school boards in fact have child abuse policies and they would speak to education for our staff about how to recognize the signs of abuse and the proper procedures for reporting, both to the board and to family and children's services.

**Mr Garfield Dunlop (Simcoe North):** Ms Sandals, welcome again. I saw you here one day last week and it's a pleasure to have you back on Bill 101.

**Mr Marchese:** They like you too.

**Mr Dunlop:** Yes, they seem to. I'm curious; Bill 101, in its form, focuses on the prevention and reporting of sexual abuse for members of the Ontario College of Teachers, wherever they practise in our province. I wanted to hear your comments on sexual predators and why we assume that only the college can deal with sexual predators. What about the Criminal Code and the Child and Family Services Act? Do you have any comments on those? They dwell on people who may not be included under the College of Teachers.

**Ms Sandals:** First of all, when we're speaking of the Criminal Code, the Criminal Code has a very high standard for when someone is actually convicted of sexual assault, and in fact school boards work to a higher standard. So it's often the case that a teacher will be either disciplined or dismissed in the absence of a criminal conviction. I know there have been instances in my board where we have fired a teacher in the absence of a criminal conviction. The Supreme Court of Canada has upheld the right of school boards to demand a higher standard of conduct than simply the Criminal Code standard. So, yes, the Criminal Code exists, but we work to a higher standard.

The Child and Family Services Act requires that any suspected sexual misconduct by any member of the community be reported to family and children's services. They investigate and, if necessary, instigate a criminal investigation. However, that has to do with one single incident. It has nothing to do with removing the teacher from the profession per se. That's why the definition of sexual abuse in this act is very important, because it establishes a higher level of conduct than the Criminal Code. The act is also important because of the reporting requirements to the College of Teachers which ensure that not just one board disciplines the teacher but the teacher can be removed totally from the profession, at least as far as public and Catholic boards are concerned.



**The Chair:** On behalf of the committee, we wish to thank the Ontario Public School Boards' Association for their presentation.

1600

#### ONTARIO COLLEGE OF TEACHERS

**The Chair:** The next delegation scheduled before the committee is the Ontario College of Teachers. Welcome this afternoon. We have 20 minutes. For the purposes of Hansard, could we ask for your names, and then please proceed.

**Mr Larry Capstick:** Good afternoon. My name is Larry Capstick. I'm chair of the governing council of the Ontario College of Teachers. With me today are the vice-chair of the council, Marilyn Laframboise; Joe Atkinson, registrar and chief executive officer of the college; and our legal counsel, Caroline Zayid from the firm of McCarthy Tétrault.

On behalf of the college, I'd like to thank the committee for this opportunity to comment on Bill 101. We appreciate that time is limited and we do want some time for questions, so I will simply acknowledge that we have provided you with a written brief that describes our position in more detail.

Before we begin, a little bit of background: as you may be aware, the college is the regulatory body of the teaching profession in Ontario, with responsibility to govern 183,000 members of the profession. The college sets professional and ethical standards for teachers and is responsible for ensuring that teachers are appropriately qualified and competent. We also receive and investigate complaints against members of the college, which includes responding to allegations of professional misconduct of a sexual nature.

Only the college has the power to issue and revoke a teacher's certificates of qualification and registration and only the college can make sure a teacher found guilty of serious misconduct cannot hold a licence to teach in a publicly funded school in Ontario.

We are pleased that the issue of student safety is on your legislative agenda, and there is much that is helpful in this bill. For example, we support a reporting obligation not only for school boards but for other employers of certified teachers. It is also helpful to require a report to the college of not only a teacher's conviction but also a charge for certain offences under the Criminal Code.

Having said that, we are concerned that this legislation does not fully reflect the recommendations of Justice Robins and, subsequently, the college. Without amendment, this legislation is at best, we assume, a missed opportunity. At worst, we believe it will fail to make our children as safe as they could be if the recommendations were implemented in full.

I want to point out that the college regulations require more from a teacher than merely not breaching the Criminal Code. Professional status is a privilege. Teachers are held to a higher standard of conduct than a private citizen because teachers instruct and guide our children

and because teachers occupy a position of trust and moral authority over children. We're not talking about regulating conduct between adult peers; therefore, we need to prohibit and discipline certain conduct not covered by the Criminal Code and not adequately addressed by Bill 101.

This bill is a response to a report by the Honourable Sydney L. Robins entitled *Protecting our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools*. As the title implies, Robins's focus was on early intervention and prevention, rather than waiting until after a child has come to harm or the consequences.

In general, we strongly endorse Robins's recommendations. In fact, we have already implemented his recommendations as far as we can with the authority that we presently have. We also made formal recommendations to the Minister of Education on March 26, 2001, which we have attached to our written brief.

Our principal concern is that Bill 101 defines sexual abuse instead of sexual misconduct and uses a definition that fails to include all professional misconduct of a sexual nature. By referring to sexual abuse, the emphasis is placed on the victim and the question of whether the victim did or did not suffer abuse or harm. This, in our opinion, is not the appropriate focus. The proper emphasis must not be on the student but on the teacher, who is solely responsible for his or her professional conduct.

In his report, Justice Robins stated, on page 201, that the term "sexual abuse" "may not be suitable to describe offensive conduct of a sexual nature which nonetheless should be proscribed. Put simply, the term is under-inclusive and fails to capture the full range of sexual misconduct which may properly be the subject of disciplinary proceedings by an educator's employer or by the college. Its use may leave the erroneous message that only those forms of sexual misconduct which can be characterized as abuse should be regarded as professional misconduct."

"... misconduct of a sexual nature should be described as such. More to the point, the regulation should serve to inform and educate members. This means that not only should the term 'sexual misconduct' be utilized, but that it should be defined."

The college, through considerable consultation and debate, followed Justice Robins's advice and resolved that sexual misconduct should be defined as "offensive conduct of a sexual nature which may affect the personal integrity or security of any student or the educational environment."

In practical terms, we are concerned that the definition in Bill 101 may not cover what is known as "grooming behaviour." This is conduct by a sexual predator to select and prepare potential victims. It is particularly insidious and difficult to detect when the sexual predator holds a position of trust and moral authority over a young person, such as the role of a teacher.

Justice Robins's description of grooming behaviour is taken from pages 127 and 128 of his report, where he says:

"Grooming behaviours include efforts to form a special relationship such as providing treats, kind words,



favours and attention; non-sexual touching to gauge the child's reaction; and, perhaps, sexual comments and use of pornography.

"The intention of grooming is to test the secrecy waters so as to determine who among the chosen targets will be least likely to tell; to desensitize the child through progressively more sexualized behaviours; to forge a valued relationship that the child will not wish to risk losing through disclosure; and to learn information with which to discredit the child should he or she tell."

Such grooming behaviour could be sexual in nature, but clearly, some is not. Note that the effect of grooming can be to reduce a child's willingness to report sexual misconduct to parents or authorities. This could be the result of fear or shame or a misguided belief that the relationship is appropriate. It's not good enough to assume that children will realize and will let us know when they are being victimized or exploited. If we want to identify and prevent sexual misconduct in Ontario schools, we need a broader definition that clearly prohibits the full range of such misconduct, including subtle and insidious grooming behaviour.

We need to make it more difficult for a predator to isolate, manipulate and exploit a child under the guise of providing educationally appropriate support or assistance. The definition in Bill 101 refers to "behaviour or remarks of a sexual nature by the member toward the student." We believe this definition may not cover all conduct intended to establish a sexual relationship with a student. For example, the definition does not clearly prohibit conduct such as invitations to a student to attend at the teacher's home; invitations to accompany the teacher on a social outing or "date," or to spend the night at a teacher's residence; exchanging notes or e-mails, e-mail messages of a personal nature with students; gift-giving, favours or other special attention; touching that is not explicitly sexual in nature but which a reasonable observer might conclude is a prelude to sexual touching; sexually harassing remarks not directed toward the student but to other students or colleagues or to an entire classroom.

Let me emphasize here that the college does not believe all such activities are automatically a form of professional misconduct. Every case is unique and every case must be considered based on specific evidence and circumstances.

We are also concerned that the definition proposed in Bill 101 is essentially copied from the procedural code of the Regulated Health Professions Act. We feel this overlooks the fact that the interactions between a teacher and a student are quantitatively and qualitatively different from typical interactions between a health professional and their patient. The amount of time a teacher can spend with a student is much greater and therefore a sexual predator in a teaching role has more opportunity for grooming behaviour. Also, teachers supervise young children in the place of their parents, whereas a parent is likely present or close by for a child's typical visit to the doctor or dentist.

## 1610

Finally, part of the duty of a teacher is to instruct a student in values and to offer moral guidance and leadership. Sadly, research in this area and cases investigated by the college reveal instances in which this moral authority has been the pretext used by sexual predators to groom students for sexual interaction. A definition of sexual abuse copied from the Regulated Health Professions Act we believe simply does not address all the subtle ways a person in a teaching position can groom a student for a sexual relationship.

We have identified some additional concerns in our written brief. These are with respect to two loopholes created by Bill 101 in the proposed subsections 43.2(1) and 43.2(2). The wording of these sections does not address specific problems outlined by Robins: transfers of a teacher from school to school and resignations during an investigation into allegations of professional misconduct. However, you've already heard from previous speakers on this point today.

I'll let the written brief speak for itself. Chair, with your permission, I would now turn back to you for questions.

**The Chair:** Thank you very much. That would leave us with about four minutes for questions from each party. We'll begin with the NDP.

**Mr Marchese:** Thank you for your presentation. First question: have you discussed this with the minister and/or the ministry staff, and what have they said to you with respect to what you've just talked to us about?

**Mr Capstick:** Certainly we have had opportunities to meet with the minister and offer our points of view on this subject. As well, I mentioned in the report that we've had substantive consultation. We had a major consultation at the college with what we would call the traditional stakeholders on this topic. Our report, to a large extent, exemplifies advice and comments that came from that consultation back to the college council, and the college council, in its deliberations and subsequent conclusions, prepared that report.

**Mr Marchese:** I understand. I was just wondering whether the minister has responded to this in any way, directly or indirectly, or whether the ministry staff has responded to this directly or indirectly.

**Mr Capstick:** I'll provide the registrar with an opportunity to give the response.

**Mr Joe Atkinson:** The answer is yes, we have advised ministry staff and the minister's staff and have had a dialogue in this regard, and that dialogue continues. We have agreed to disagree on the definition.

**Mr Marchese:** OK. That's what I was interested in. You talked to them and they agree to disagree. OK. What about other responses from other federations with respect to this issue? You obviously must have seen their opinion. What is your view of their opinion with respect to this?

**Mr Capstick:** You're correct. They were part of the consultation process that I spoke of earlier. However, the members of the college council whom I represent were of



the opinion that a broader definition was more useful to us. The concern of the college, if you get right down to brass tacks on this, is prevention rather than dealing with consequences. I can't put it any more simply than that.

**Mr Marchese:** I appreciate that. Obviously, you're not concerned that what you are proposing by way of the definition of sexual misconduct might be too broad as you attempt to broaden the definition of sexual abuse and that in so doing you perhaps put some teachers at risk.

**Mr Capstick:** Again, as I mentioned in the report here, I think each case will be judged on its own merits when it comes before the college. I do appreciate where some people may perceive that this has sweeping or blanket implications. However, I think the record of the college, given the disciplinary hearings, is that each case is determined on its own merit.

**Mr Marchese:** Last question: do you have a view with respect to the fact that this bill does not cover the private schools? They're going to be publicly funded now and a sector of that population, those non-certified teachers, are not covered or not subject to this law, which means some students will be unprotected.

**Mr Capstick:** That certainly was an issue of concern to the governing council and was part of our deliberations in debate; however, we have not made a public statement on that issue at this time.

**Mr Marchese:** Do you have a view?

**Mr Capstick:** I certainly have a personal view—

**Mr Marchese:** Do you want to tell us?

**Mr Capstick:** —but I represent 31 other members and I'm not in a position at this point to offer my own personal point of view.

**Mr Carl DeFaria (Mississauga East):** I have a question. In your news release you state, "The college is also concerned that Bill 101 does not go far enough to prevent sexual predators from moving from school to school undetected. In fact, there is no duty under the bill to report to the college the transfer of a teacher suspected of sexual misconduct to another school. There is also no duty to report to the college when a teacher resigns in the course of an investigation by his employer into allegations of sexual abuse."

I have the act in front of me. Part II of the bill, section 4, clearly states that section 43.2 would require an employer of a member of the Ontario College of Teachers to report to the college when the employer "terminates the member's employment" or restricts "the member's duties for reasons of professional misconduct." As well, an employer of a member must report to the college if the employer "intended to terminate the member's employment" or restrict "the member's duties for reasons of professional misconduct but ... did not do so because the member resigned." How can you justify saying the exact opposite of what the act says?

**Mr Capstick:** I'm going to defer to the registrar on that point.

**Mr Atkinson:** Thank you for the question. In both those cases, you'll note that a transfer is not a termination, nor is it a restriction of duties. We're talking about a

transfer from school to school. I think that addresses your first question.

On the second question, the phrase is "intended to terminate." If there's been no intention to terminate and a person resigns under that situation, there's no requirement to report if in fact there has been no intention to terminate. There could be an investigation, but no decision has been made to terminate. So it's a wording situation more than the concept. I have no doubt the government intends to meet both of those requirements. It's simply a wording definition. Our hope is that they will meet both of those requirements.

**Mr DeFaria:** So you don't think the wording of this section covers that.

**Mr Atkinson:** No, we don't, and legal counsel may wish to comment on that.

**Mr DeFaria:** Is there wording you can suggest that would cover that?

**Mr Atkinson:** We provided, in our letter to the minister in March, the wording we prefer, which would close that loophole; in fact, close both loopholes.

**Mr DeFaria:** Would the counsel provide me a copy of that letter?

**Mr Atkinson:** Actually it's in your package that you have before you.

**Mr Garry J. Guzzo (Ottawa West-Nepean):** Mr Capstick, thank you very much for an excellent presentation, and welcome. I don't know how much time I have. I have nothing in the way of comment with regard to what you have said here; it's what you didn't say. I commend you for being so modest. If I were representing the teachers, I would be here telling this committee what your people have done in this area.

I can take you back to Ottawa in 1978 when they changed the legislation and made it compulsory for professionals to report. At that time, in Ottawa, we were doing 10 to 12 cases a year; in 1988, my last year with that court, we were doing 125 to 150 cases a year and your people were responsible, because you were the ones who were reporting 90% of them. Phys ed teachers and guidance counsellors in the schools turned this whole game around. There's been no increase similar to those statistics in the amount of sexual abuse of children. It's simply the reporting of the teachers carrying out their responsibilities and their duties, on which I encourage you to be more forceful and positive because it has been a tremendous contribution in this field, and I thank you for it.

**Mr Capstick:** Thank you, Mr Guzzo. I'm quite well aware, as a resident of Ottawa, of your record. I would only add a personal comment here. This is one issue where I think throughout the process it's been quite revealing that all the various stakeholders have, for the most part, been rowing in the same direction, and I think it's been a very positive step forward. Certainly we're looking forward to ensuring that those students who are in faculties of education as well are aware of the issues and the terminology and the fundamental dos and don'ts



before they get started, rather than along the way. We see that as a very important component of this as well.

1620

**Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington):** I too appreciate the time you've taken to make a presentation to the committee this afternoon. I have listened with interest to your issue around the definition or what you would see should be the definition in place of "sexual abuse:" "sexual misconduct." Certainly that's an issue we have heard before at this committee, so I appreciate that you have very clearly stated your opinion on that matter.

I am curious, however. In the body of the document you presented to us this afternoon, you suggest to this committee that the reason you would replace the term "sexual abuse" with "sexual misconduct" is based upon presentations in the Robins report, yet you have indicated on page 4, "The committee should also note that Justice Robins recommended the definition be placed in regulation, not in legislation." I suggest that I see a conflict in the presentation you've made today, because it would appear you're asking that the committee consider amending the legislation.

**Mr Capstick:** I'll defer to the registrar.

**Mr Atkinson:** In fact we would prefer that it be in regulation. However, there is now legislation before us. We're addressing the legislation that is before us.

**Mrs Dombrowsky:** So you would prefer that it's in the regulation.

**Mr Atkinson:** That was both Robins's recommendation and our recommendation. However, it has appeared before us as a piece of legislation and therefore we are addressing today what we consider to be the positives and three areas where we think the legislation needs to be improved.

**Mrs Dombrowsky:** I wonder if you would comment, as well, and maybe you have caught it in one of the three recommendations you've made or the three issues you bring to the attention of this committee. It would be with regard to individuals who may not be members of the college because they might be practising their profession in a private institution where they would not be required to be a member of your college. They may have engaged in this type of activity in the private institution, and this proposed law would not require that private institution to report to you. It is possible that this sort of individual might look to gain employment in the publicly funded system and then become a member of the College of Teachers. Obviously I think you can see where your concern would be, that you would inherit or you would acquire an individual in your college who would have some history in a private system that you would have no notification of. Is there one of the issues that would address this reality?

**Mr Capstick:** I'll take the first part of this and then I will defer to any of my other colleagues here.

You're quite right. That is an issue of concern and it always has been, whether they're going from the public system into the private system or vice versa. While we

don't have a foolproof mechanism in place, the college has taken the position that we'll move forward in small steps and hopefully somewhere down the road that issue will be resolved. But immediately, at this point, the registrar might comment on how it's dealt with here.

**Mr Atkinson:** I'll only add that a teacher, in the Education Act, is defined as a member of the College of Teachers. It makes complete sense to us that if someone is to teach in Ontario, they should belong to the College of Teachers. It presents us with a problem, as you've outlined the scenario, because there would be no trail on that particular predator, and until that predator showed himself or herself through a complaint, we would have no tracking mechanism on that person, as we would not for people coming from other professions. But we believe that the Education Act is clear: a teacher should be defined, and is defined, as a member of the College of Teachers. On our governing council we do have representation from the independent schools, the private schools. We have a member who represents that particular sector, and many of the members that work in independent schools are members of the College and are hired under those conditions. We believe that anyone teaching should be a member of the college.

**Mrs Dombrowsky:** So your college would recognize that this is a problem but you haven't brought forward a recommendation to address it at this time?

**Mr Capstick:** Not at this time. I can tell you that we've had instances already since the inception of the college where we've gone certainly beyond the private system and beyond the province of Ontario, where we have had discipline panels that have dealt with individuals and then had phone calls from communities in the United States where the person was attempting to gain employment; again, small steps.

**The Chair:** On behalf of the committee I wish to thank the Ontario College of Teachers for coming forward this afternoon. Thanks again.

RICKETTS, HARRIS

**The Chair:** Is Michael Cochrane present? Good afternoon, sir. You have 20 minutes for your presentation, including any comments or questions from the committee.

**Mr Michael Cochrane:** Thank you. I don't have a handout, in case you're waiting for something to be circulated. My name is Mike Cochrane. I'm a lawyer in Toronto with a firm called Ricketts, Harris. I represent the victims who are abused by teachers, by staff, by priests, by other people. When I saw the advertisement in the newspaper about the committee considering the legislation, I thought it might be helpful to hear a little bit about what happens if you do nothing, in other words if you don't have legislation like this; and also to consider the proposition that the best way of protecting the students who are in the system now or who are going to be coming through in the years to come is to look long and hard at the way we are handling victims now. The



way that we treat victims now can send the strongest message to potential abusers but also the people who are responsible, the gatekeepers, like the college, which we just heard from.

Everything I'm about to tell you I've told the Premier's office three times and I've told the Attorney General's office two times. I've lost track of the number of times that I've talked to the Ministry of Education about it and I've briefed opposition critics in the Liberal Party, at least Michael Bryant and Ernie Parsons, about this. So I'm not telling any tales out of class.

I want to tell you about some of my clients.

*Interjection.*

**Mr Cochrane:** We tried.

I've been a lawyer for 21 years. In 1994 some deaf people came into my office here in Toronto and said that they were representative of a group of students who had been physically and sexually abused at the schools for the deaf in Ontario. When I say schools for the deaf I mean the three schools, one in Belleville known as Sir James Whitney, which used to be called the Ontario School for the Deaf; one in Milton called E.C. Drury; and one in London, Ontario, called the Robarts school. At that time in 1994, I met with probably half a dozen students who told me that they were having a hard time getting anyone to listen to them about alleged abuse in that institution. I arranged for former colleagues of mine with the Ministry of the Attorney General to meet with the students and to take detailed transcript evidence from them about the allegations of abuse that had occurred at Sir James Whitney. They met with them and on the basis of that concluded in 1994 that something seriously wrong had happened at the school for the deaf. My own estimate at that time was that there were probably about 50 students who had been seriously physically and sexually abused. This was out of a potential student population of about 900 over a number of years. I thought about 50 had been seriously abused and that there might be some others who had been victims of what we might call corporal punishment or inappropriate physical discipline or physical abuse.

1630

Little did I know that seven years later I would still be trying to get hundreds of these people—hundreds who were still left—an opportunity to get a hearing or to have someone to tell their story to or to arrange for counselling. Over that same period of time—that is, between 1994 and today, 2001—I have represented other victims of abuse by priests, by teachers, by staff. I participated in the negotiations on the settlement of the St Joseph's Training School cases, where Christian Brothers abused residents of training schools in Ontario. I had a chance to at least look at the settlement for Grandview school for girls, where there were girls in our training schools who were abused. I've been in touch with the people who have been bringing forward claims on behalf of deaf people in British Columbia, deaf people who were abused by teachers in the schools for the deaf there. Their case recently went all the way to the Supreme Court of

Canada and confirmed that these victims can bring their cases forward in the form of class actions. I have watched the residential schools cases involving aboriginal students come forward. And here, seven years later, I still have hundreds of clients who went to schools in Ontario that were directly responsible to or accountable to the Ministry of Education, and those students have had the door slammed in their face.

I thought what I might do is just tell you a little bit about how this has been handled, and then you can draw whatever conclusions you want from it about whether or not legislation like the one proposed will actually help students like these. I'm not telling anything here that is confidential. I have with me in this binder a cross-section of arbitrator decisions that talk about the kind of abuse that went on at the schools: sexual assaults, intercourse, forced fellatio, physical assaults, terrible physical assaults of deaf students being attacked from behind when they wouldn't know that someone was going to hit them.

In 1997, there was a commitment from the government to establish a compensation program for these students, who would come forward and tell their story to an investigator with the assistance of interpreters. They would have a chance to have their story verified by investigators going to look through school records to make sure they actually went to the school, that they identified real teachers, real staff people. Belleville police have been swamped, participating in some of these investigations. Criminal trials are still going on. As a matter of fact, there was a preliminary inquiry that was supposed to start yesterday in Belleville; it had to be cancelled because there were no interpreters for the deaf people, even though most of the victims were deaf.

In any event, these students were invited to come forward, tell their story; they would get their story put before a private arbitrator. The former dean of the University of Ottawa law school, Sandra Rodgers, was the arbitrator. She received the packages and slowly but surely began to render decisions for these students, 185 of them: \$8 million from the Ministry of Education, from the Ontario government, to pay for verified victims of physical and sexual abuse at one school for the deaf, in Belleville. In December 1999, the Ministry of Education said, "We're not compensating any more. It doesn't matter that there are over 100 still to go. We're not compensating any more." I can tell you now that in my office I have over 100 files opened on behalf of students who went to Sir James Whitney, students who went to E.C. Drury in Milton, and I have six files open on behalf of students at the Robarts school in London, Ontario.

The \$8 million, that's taxpayer money because these schools—there's nobody else that's responsible; there were no other organizations like Christian Brothers or Anglican churches or Catholic churches that had to contribute. Those were straight taxpayer dollars to compensate these students, who had their claims verified by a quality arbitrator and money paid out. There were also promises of counselling and retraining and some



ongoing education support for some of the students who'd received their money.

Now, I want to tell you that we've been told that if we want any other compensation on behalf of these students who missed the deadline, they're to commence lawsuits against the Ontario government. Those things are, we hope, still something that can be avoided. The reason I mention all of this in my brief 20 minutes is that I've been trying to get—and I can tell you, I'm not rich off these cases. I've been working virtually pro bono for seven years helping these deaf students. Interpreters work pro bono, in many cases, to help them; they don't charge for a lot of the meetings. We are at our wits' end in trying to get somebody to listen to students who make these claims. In some cases, I have a wife who submitted her claim on a Monday and it went through for compensation, and a husband's claim arrived on a Wednesday; he missed the deadline so he gets no compensation. It's not fair and it doesn't make any sense in law, because there are going to be other claims coming forward from other schools for the deaf in Ontario, and those cases have to be dealt with whether there's an artificial deadline on Sir James Whitney or not.

When I say I've told everybody about this—and I mentioned the Premier's office and the Attorney General's office. I've actually met with their staff and I've told them exactly what I'm telling this committee about the way these claims have been handled. For me, when I have to field telephone calls, as a lawyer in private practice, from the Belleville police telling me that they don't know what to do any more because there are so many students they've had to interview—they've had one police officer, one detective there working on it almost full-time with no help, and I'm told she, the detective involved, was told to refer the cases to me.

**The Vice-Chair (Mr Carl DeFaria):** Mr Cochrane, if I may just give you a slight warning with respect to the comments you are making, just to avoid going into details of cases that may identify the school or the people involved, because we have standing orders that may cause us problems if we identify—

**Mr Cochrane:** I'm very conscious of that. These are my clients and I know when to draw the line in talking about their cases.

I don't want to run out of time, but I do want to tell you that there are books that are written; I've brought a couple along with me. This is the book that's written about Mount Cashel in Newfoundland. This is the book that's written about the training schools in Ontario, for the way the cases were handled there. Sometime soon, somebody somewhere in Canada is going to write a book about the schools for the deaf, because it's the next catastrophe that's been going on, whether it's the ones in Vancouver or here in Ontario.

The reason I mention all of these cases and all of these facts is that, yes, I support the legislation. I support the comments made by the college that came before me. I think that probably, if the bill is passed, somebody somewhere will not be sexually harassed or sexually abused

by a teacher, public or private. I hope that aspect of the legislation is sorted out. It should include everybody, public or private.

My point is just simply this: yes, as I say, I'm in favour of the legislation, and if you didn't have something like this, I think there probably would be ongoing abuse or more abuse. But real protection comes, it seems to me—and this is my own cynical view, having seen hundreds of these cases—when somebody connects liability to the acts, for not doing what you're supposed to do.

1640

If you say the college is supposed to do something and they don't do it, there should be consequences that flow from that, and if somebody is supposed to report something and they don't report it, there should be consequences for that, because in my view of the way these cases come forward, nothing happens until somebody pays. When somebody pays, then suddenly everybody pays attention. That's a very sad and cynical conclusion to come to, but lawyers out in private practice—I'm just one who does these kinds of cases. There are lots of them out there. It is only when people pay that we get any kind of commitment to future responsibility.

I can tell you that a lot of insurance companies have created risk management policies around sexual abuse simply because they were forced to pay and they wanted to make sure they didn't have to pay in the future.

As I say, I support the legislation. There should be some additional consideration given to liability for not doing the things the legislation says someone is supposed to do. I would also suggest to you, just as a point of information, that you ask Minister Ecker to come here and tell you about the way the settlements have been handled in the deaf students cases through the Ministry of Education and how the ones in future will be handled, because that's where we will really learn about whether the commitment to protecting students is genuine.

In conclusion, because I hope there are some questions about this, there is a need to consider also the role of the Criminal Injuries Compensation Board in these kinds of cases. I can tell you that there are many students or victims of sexual abuse who are assaulted, there's a criminal conviction, and they end up making an application to the Criminal Injuries Compensation Board. That board is supposed to subrogate and go after the abuser to recover money for taxpayers so we get reimbursed for the money that's paid out. That doesn't always happen. There's an ongoing role for the Criminal Injuries Compensation Board in these kinds of cases.

I must also tell you that another problem we face in the field—I don't know if you can solve it through this legislation—is that victims are often required to sign confidentiality agreements if they want their money. At the very end of the exercise, when someone is putting a cheque in front of victims and they need that money to pay for counselling or, as in many cases, they are deaf people who are on Ontario disability benefits, they need that money desperately and there's a lot of pressure to sign confidentiality agreements.



To go back to my original two points at the beginning, I support the legislation. It's better to have it than not to have it. The best measure of a commitment to protecting students from sexual abuse is how you treat the victims right now. Right now they're not being treated very well.

**The Vice-Chair:** We have barely a minute for each caucus.

**Mr Dunlop:** Mr Cochrane, I want to welcome you here today. As the representative of the minister and as the parliamentary assistant to the Minister of Education, I have no questions for you today.

**Mrs Dombrowsky:** Thank you very much, Mr Cochrane, for your presentation. I ask you this question because the act is entitled An Act to protect students from sexual abuse and to otherwise provide for the protection of students. The act deals exclusively with handling teachers. Because you have such a volume of information about victims, are all of them victims of teachers?

**Mr Cochrane:** Teachers or staff at a school.

**Mrs Dombrowsky:** Or members of staff. That is something we have heard during the debates at this committee, that while the intent of the act is to protect students, it is very specific with regard to naming only how teachers are to be dealt with. Understandably we have heard from individuals who are concerned that other people who would have roles of responsibility and of trust with students might not be caught in this legislation. I'm thinking of volunteers in classrooms, education assistants, secretaries, custodians, people like psychometrists or psychologists who would be invited into schools to deal with and manage children.

Would you have a comment on that in terms of the legislation? Do you think it would be important to take this opportunity to perhaps consider including those individuals who would have positions of trust with students?

**Mr Cochrane:** I think any student in the school community is entitled to protection from anybody who comes into their community. Whether that's a teacher, a staff person, a doctor or an education assistant, they should all be caught in the same net.

**Mrs Dombrowsky:** I think it's important to point out to you that while the act would indicate that it is intended to protect students, it doesn't really apply to all people who deal with students in a school setting.

**Mr Cochrane:** I agree.

**Mr Marchese:** One of the strongest points you've made is around liability. You said you should attach liability for not reporting. This liability would apply to anyone in the system. It's not just the College of Teachers, but obviously anyone who would know or ought to have known and doesn't report. You would attach some form of liability. Would that be by way of dismissal or fines? What could such liability—

**Mr Cochrane:** I hadn't considered the possibility of fines, that type of liability. I was thinking more of being responsible to the next victim and the victim after that. What we find in representing these students is that—and

I'll give you an example of a case I was involved with recently where a priest taught in a school but was abusing in the community. He wasn't abusing students in the school but was using his position in the community to go into homes, and there was abuse there. The minute we learned about that priest, the first reaction was that we wondered where else he had taught, where else he had been. He had moved around through a number of parishes and congregations. The automatic conclusion you reach is that they often have many victims, not just one or two or three; sometimes 900.

My view is that whoever is supposed to do a particular thing to stop that chain, if they don't do it and someone else is abused the next day or the next week or the next month because they didn't do what they were supposed to do, there should be liability for that. That's the only way we stop the exponential increase of this kind of abuse.

**Mr Marchese:** I appreciate your presentation and the work you are doing in this field.

**The Vice-Chair:** Thank you, Mr Cochrane, for appearing before the committee.

1650

#### CANADIAN HEARING SOCIETY

**The Vice-Chair:** We now have presenters from the Canadian Hearing Society, Mr Gary Malkowski. I would like to welcome Mr Malkowski to the committee. Mr Malkowski is a former member, so welcome back to Queen's Park. He will be assisted by a sign language interpreter. You may go ahead, Mr Malkowski.

**Mr Gary Malkowski:** Bev, I will defer to you.

**Ms Beverly Pageau:** I'll do the first part of the presentation. Mr Malkowski is here to make sure I do a good job.

My name is Beverly Pageau and I'm the manager of Connect Counselling Services and the manager of the general social service program in the province for the Canadian Hearing Society.

We're here with a very simple message, and that is to point out the special needs and vulnerabilities of deaf, deafened and hard-of-hearing students in our school system: in our provincial schools, in our residential provincial schools, as well as in mainstream settings.

The Canadian Hearing Society is a not-for-profit charitable organization incorporated in 1940. We provide services that enhance the independence of deaf, deafened and hard-of-hearing people and encourage prevention of hearing loss. The Canadian Hearing Society strives to develop high-quality and cost-effective services in consultation with national, provincial, regional and local consumer groups and individuals.

The Canadian Hearing Society currently has 27 offices in Ontario. All our Canadian Hearing Society offices regularly see consumers—deaf, deafened and hard-of-hearing people—who have no income, no home, no food; minimal literacy; are living on the street; are currently experiencing or have experienced physical and sexual



abuse; arrive at our offices in emergency situations, sometimes depressed and suicidal; and have mental health and addiction issues.

This community of deaf, deafened and hard-of-hearing individuals is a community that can be more vulnerable. As the previous speaker pointed out and as recent studies indicate, the incidence of sexual abuse in various samples of the deaf population can be between 11% and 54%. One study suggested that the incidence of sexual abuse for children who are deaf or hard of hearing can reach as high as 92%—a published statistic.

Furthermore, the research studies report that deaf children are more vulnerable to abuse. Factors involved in their vulnerability or susceptibility to abuse centre around communication ability and communication access, particularly when deaf children have hearing parents or are enrolled in school programs where communication access is limited. What we mean there by communication access is either an effective method of communication the child has developed with adults or a sign language interpreter. The majority of deaf children are born to hearing parents and so communication is definitely more often than not a problem, an issue that needs to be resolved.

The Ministry of Education's 1991 Report of the Review of Student Care at the Provincial Schools for the Deaf and Blind and Demonstration Schools noted that there were a number of allegations of abuse of students at the provincial schools for the deaf and that investigations were conducted by the police and children's aid societies.

Sexual and physical abuse victims at the provincial schools for the deaf and at school boards across Ontario have formed the Ontario Deaf Education Victims Network. The network provides former students with information on compensation, arranges interviews with investigators and obtains compensation through the private adjudication process.

As we previously heard, in June 2001 the Supreme Court of Canada ruled unanimously that 280 claimants, all students of Jericho Hill School for the Deaf in British Columbia can now collectively sue the government of British Columbia for compensation. Their class action suit alleges that school administrators left them vulnerable to, and failed to protect them from, sexual abuse experienced there at the school.

The Ontario teacher preparation program in the education of the deaf and hard of hearing lacks a course on the liabilities and responsibilities of educators of deaf students and reporting protocols for suspected sexual and physical abuse incidents and health and safety violations.

The Canadian Hearing Society feels strongly that teachers of deaf students have to learn to be able to communicate with their deaf students, as well as put in place communication assistants such as sign language interpreters and real-time captioners, to ensure that deaf children are able to communicate effectively with their teachers and therefore are able to report sexual abuse incidents.

It's our experience that many teachers of deaf students across Ontario do not seem to be aware of their legal

responsibility to properly report suspected abuse incidents and it's our experience that no ongoing training has been provided in this area. As well, no materials, brochures or workshops on student safety and rights are provided by the Ontario College of Teachers to students enrolled in the teacher preparation program in the education of the deaf and hard of hearing.

It's interesting to note that currently, despite what some people would consider obvious need, there are no standards set by the Ontario College of Teachers on language competency. There's no way to know or to trust that teachers of deaf students are able to communicate effectively with their deaf students.

We're seeing that there's no formal reporting mechanism, including appropriate communication accessibility in most school boards, for students to report. We're seeing that most teachers of the deaf in Ontario do not have the appropriate cultural and language communication skills to communicate effectively with their deaf and hard-of-hearing students in provincial schools. Furthermore, there is no communication accessibility mechanism to allow former and present deaf and hard-of-hearing students to report against teachers of the deaf who have committed misconduct behaviours.

For example, someone has to take responsibility for the cost of communication accommodations, such as sign language interpreters or real-time captioners, for deaf individuals who wish to file complaints with the Ontario College of Teachers. Again, we heard previously that it's not always possible to find sign language interpreters. The college itself does not have the resources to fund communication accommodations of this nature.

Specifically, the Canadian Hearing Society would like to support the attempt to protect students. We would recommend that Bill 101, the Student Protection Act, 2001, be amended to include the following:

—first, to require the Ontario College of Teachers establish its own accessibility improvement committee to develop and implement accessibility standards in the Ontario College of Teachers' office, provincial schools for the deaf, as well as school boards. These standards would enable deaf and hard-of-hearing students to report sexual and physical abuse and other health and safety violations;

—second, to establish an enforcement mechanism to ensure that the accessibility standards prescribed by the Ontario College of Teachers are upheld in provincial and demonstration schools and the special education offices of school boards; and

—last, require that the Ontario College of Teachers develop brochures, awareness kits and related materials and provide workshops on policies and procedures for reporting sexual and physical abuse incidents.

In summary, I think what we're saying is that deaf students do have a special vulnerability. There's an added difficulty in accessing information and understanding processes and being able then to access authorities to report and, as well, barriers in communication and being able to communicate to the adults in authority.



**Mr Malkowski:** If I might make comments just in addition to what Bev has said, our biggest concern has to do with access to communication information at the schools for the deaf. The teachers are still failing to be proficient in sign language and they fail to understand their obligation to report suspected abuse. School boards overall, very large numbers of them, have deaf and hard-of-hearing students who are mainstreamed in with regular populations without any access to sign language interpreters, anyone to advocate on behalf of the students. Schools for the deaf have a family support advocate's office so students are able to go to the student advocate. But students who are in regular school boards are left without any recourse to any kind of advocate. That is something that school boards across the board should be providing for those students who are mainstreamed.

1700

A second concern has to do with the training program for teachers of the deaf. There is no information given to those teachers about their liability and their responsibility under legislation. This is lacking for them. As well, staff at the provincial schools or staff at school boards are not given the information they need to make them realize they need to be reporting suspected abuse. The school boards aren't establishing standards as well for any kind of protocol for the use of sign language interpreters.

We have written a letter to the Ministry of Education saying that some kind of standard proficiency and the appropriate use of interpreters in order that suspected abuse might be reported by students needs to be established, but this is a lack. There has not been a system put in place in order for this to happen.

As well, in the review Bev made mention of for the demonstration schools, schools for the deaf and the blind, the person who wrote this is Suzanne Herbert, who is presently the deputy minister for the Ministry of Education. These are her words. She's "aware of the information" that her own report has identified and contained. She has made various recommendations that I feel we need to follow up on and I would suggest that indeed we follow her recommendations established in this report.

This is something that doesn't only address teachers. I think we also need to be looking at the situation of support staff, residential counsellors. We need to look at those people who are driving buses, who are taking deaf students to the schools. This legislation must also address them. Of the whole network of people who are responsible for deaf children, none are able to communicate with children who are deaf. From my own experience as a child who went to a school for the deaf, I'm able to speak for the deaf community. A great many people had awful experiences that could have been avoided. Frustrations in communication access and inability to report, many people experience that.

The government that I was present in put forward ASL to be recognized as a language of instruction permitted in the classroom. Now it's been almost 10 years that the American sign language has been recognized, but there are regulations that we need to have established to

address that. We have legislation, but no regulations have ever fallen out from the legislation. There are no standards for teachers of the deaf to have competency in sign language communication. There's no requirement. Teachers of the deaf at the training program: there's no requirement for them to have sign language competency there as well.

If we look at the outcome, how can they be competent teachers of the deaf, how can they be an access route for children to make complaints of sexual abuse and how can they make any kind of accommodation in instruction to students? Students are left without any avenue of recourse. Sign language interpreters are not brought in either.

I would recommend that there be some formal mechanism put in place in order to accommodate students. As well, if we look at the Ontario College of Teachers, there used to be a responsibility put on them to establish language competency requirements for teachers of the deaf, and then an enforcement mechanism and some kind of training requirement put in place in order that we can avoid these situations of abuse occurring.

**The Chair:** Does that conclude the presentation?

**Mr Malkowski:** Yes.

**The Chair:** Thank you very much for that presentation. We have about a minute for each party just for a brief comment.

**Mrs Dombrowsky:** Thank you very much for your presentation. I do appreciate the points you have raised. With regard to individuals who would provide instruction in provincial schools for the deaf, you have made reference today to the fact that it is sometimes problematic to access individuals who have the ability to sign. I know even in the regular school system it can be difficult to engage qualified teachers. So I would expect that in the deaf community as well there are people instructing deaf children who are not qualified teachers and therefore would not be members of the Ontario College of Teachers. You can appreciate why the legislation would not in fact cover individuals who might offend under the terms of this act, but they would not be reportable because they are offering a skill in an unqualified capacity. I think that applies to the other publicly funded systems as well, but perhaps more particularly in your system, because you would be required to engage people who would have the ability to sign, but they may not be qualified teachers. Is that a concern for you?

**Mr Malkowski:** Yes, if I can just respond to that. Several years ago the Ontario College of Teachers had a partnership with York University. This is when they established a more strict standard, where there were students who were deaf wanting to become teachers of the deaf. They were restricted from this because they needed to have a bachelor of education in order to get into the teacher training program. The problem is that the universities are not providing interpreters in order for students to access the education.

As well, students are being prevented from getting a bachelor of education from Gallaudet University or west-



ern Maryland university, or their bachelor of education is not being accepted at York University. So it means that those people who are deaf and who are proficient in language are being systematically kept out of the teacher-of-the-deaf program unless they have a bachelor of education. But it's a circuitous argument, because there are no interpreters for the person to access the bachelor of education training program.

The standard that we're looking at needs to resolve this situation, where people who have an appropriate background are allowed to get into the teacher-of-the-deaf program. As well, if we look at the situation with the use of teachers' assistants, they are not members of the college either, and it's problematic, because it's an open door. We need to have some system to monitor those people: tutors, residential counsellors and the whole gamut of individuals who provide assistance to deaf students.

**Mr Marchese:** I want to welcome Gary to this place again, and welcome, Bev. Thank you for your presentation. You have obviously raised a lot of issues that are important for members to hear regularly and consistently. I know how frustrating it must be for you, Gary, and obviously you, Bev, in terms of raising these issues and sometimes not getting the responses you want and/or need.

It might be difficult to get some of the concerns you have covered in this bill—I appreciate and understand that—but, generally speaking, how is the ministry or the government responding to the concerns you're raising in terms of addressing the points you've raised?

**Mr Malkowski:** We've addressed letters to the Ministry of Training, Colleges and Universities with regard to this matter. We've expressed our concerns over the lack of standardization. Looking at the York University situation, they've stated that they are aware of the situation, but we've not had any direct response to the letters we've sent.

There's been no response to the letters we've sent on the matter of the ASL and LSQ regulations that need to fall out of the legislation that was passed.

The third issue we've put forward about the concern of safety and health for children, where there is no access to communication for them to protect themselves, is something where the Ontario Disability Act, the ODA, if it were passed, would perhaps be some kind of force, some kind of implementation of a standard. It would perhaps affect the Ontario College of Teachers as well. It would enhance, I think, the standards and the language proficiency that would be required of teachers. So there would be much fallout if that legislation were also put in place.

**The Chair:** I'll now go to the Conservatives.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** Thank you very much for your very interesting presentation this afternoon. Madame Pageau, you mentioned that you support the attempt to protect the students. In recommendation 6, you mentioned, "Have the Ontario College of Teachers issue a policy statement requiring

teachers of the deaf employed by both provincial schools for the deaf and school boards to attend ongoing staff training on reporting child/student abuse," and you talked about communication skills. We also have schools for the blind and other schools in Ontario, but you seem to have a concerns, and quite rightly so, because that's the organization you represent. Is there a higher incidence of abuse in these schools as opposed to the general public and private schools? Is that why you're making that recommendation? Could you expand on that?

1710

**Ms Pageau:** The research supports that there is a higher incidence of abuse in the deaf community and certainly in the disabled community in general because of the increased vulnerability and susceptibility. I would think, from the previous speaker, that that would be the proof in the pudding. But certainly research studies shown us indicate that there is a higher incidence of abuse in the disabled population in general. Specifically today, Gary and I are speaking about the deaf population. I don't know if there is a higher incidence of abuse reported within the deaf community as opposed to the disabled community in general, but there is a higher incidence of abuse in the deaf, versus the regular, population.

**The Chair:** On behalf of the committee, I wish to thank Ms Pageau and Mr Malkowski for coming forward. Thank you for presenting on behalf of the Canadian Hearing Society.

**Mr Malkowski:** Thank you very much for providing us with the access this afternoon in order to make this presentation to the committee.

#### ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

**The Chair:** The next delegation from our agenda is the Ontario Catholic School Trustees' Association. Good afternoon, everyone. For the purposes of Hansard, could we ask you to commence with your names and then proceed?

**Ms Louise Ervin:** Thank you. I'm Louise Ervin, president of the Ontario Catholic School Trustees' Association. With me are John Stunt, our executive director, and Carol Devine, our director of political affairs and media relations.

**The Chair:** Thank you. Do you wish to proceed?

**Ms Ervin:** The Ontario Catholic School Trustees' Association appreciates the opportunity to speak to the committee today on an issue of great importance to all of us: the protection of our children from sexual abuse. It is fundamental to our beliefs that all students should be able to receive a Catholic education in a safe, supportive and caring environment.

Over the past several years, it has been difficult for many of society's most respected institutions, including our Catholic parishes and schools, to acknowledge and deal with the revelations of such abuse within our own communities. For all the pain this matter has engendered,



it has however been a strong motivator to learn about abuse and to put in place structures and procedures to reduce the incidence of sexual exploitation of children in every way we can.

The Catholic Church has shown leadership in this area. In the introduction to the Canadian Conference of Catholic Bishops' document on this issue entitled *Breach of Trust: Breach of Faith*, Archbishop Roger Ebacher says, "Recent government initiatives on family violence in general and child sexual abuse in particular have emphasized that everyone must become involved if the violence and abuse that are so prevalent in our most intimate and trusting relationships are to be eliminated."

In his report on child abuse in Canada, Mr Rix Rogers, special adviser to the Minister of National Health and Welfare, identified the key role of the church in the healing process. He said, "The trauma of child sexual abuse affected people physically, psychologically and spiritually. It can be argued that the combined efforts of secular expertise and spiritual healing are needed to help victims, survivors and offenders heal their wounds."

The church is called to offer this spiritual healing, comfort and strength to those who suffer as a result of child sexual abuse. All church members have parts to play in this ministry and can draw on the rich spiritual tradition of the church. As institutional expressions of the church, Catholic school boards and Catholic schools share this ministry and the obligation to develop administrative procedures and protocols to ensure the safest and most supportive school environments possible for our students and employees.

As you know, the incidents that gave rise to the Robins report happened in one of our Catholic school boards, a board that has since become a leader in developing policies, procedures and training programs to prevent such incidents from occurring. The Catholic community learned from this tragic experience and set to work to share our own knowledge and the expertise of others in order that all Catholic school boards would make this concern of highest priority.

Following the revelations in Sault Ste Marie in 1993, the Ontario Catholic School Trustees' Association issued to all Catholic school boards in 1994 a document titled *Child Abuse Prevention Guidelines*. These guidelines were updated this past year to include recommendations from the Robins report and recent changes to the *Child and Family Services Act* and the *Safe Schools Act*, Bill 81. They provide school boards with information on how to establish policies that would include definitions, programs for education and training of staff, protocols for responding to complaints, investigating and reporting procedures, screening and reference procedures for employees and record-keeping procedures.

OCSTA therefore welcomes Bill 101 and the additional requirements to protect children it proposes, as these new safeguards will augment the policies and procedures most Catholic school boards currently have in place.

OCSTA supports the overall purpose of Bill 101, the *Student Protection Act*, 2001, as it responds to the issues

outlined in the Robins report. It does so by setting out a clear definition of sexual abuse, strengthening the Ontario College of Teachers' authority to take action on instances of sexual abuse involving its members, outlining responsibilities for the college and its teachers, and imposing stronger reporting requirements on employers. These requirements are similar to those already in place for other professionals and their governing colleges. We will comment briefly on a number of these areas and provide some suggestions for strengthening the bill.

**Definitions:** The definition of "sexual misconduct" for purposes of reporting and information sharing by employers and the Ontario College of Teachers is adopted from the *Regulated Health Professions Act*. While the definition is clear, we believe it would be improved by expanding the definition of "professional misconduct" to include other behaviours more widely defined in the Robins report as "grooming behaviours." These are acts of perpetrators of sexual abuse that often precede and are directed to establishing a sexual relationship with a pupil. Grooming behaviours usually involve favours, compliments and attention aimed at creating a dependency on the adult by the young person. That dependency is then exploited sexually. Grooming activity, while it may not amount to sexual abuse, is harmful to students and amounts to sexual misconduct.

**Requirements of boards:** It has been standard practice in Catholic school boards to remove from the classroom those teachers or employees charged with a sexual offence or other Criminal Code offences until the criminal proceedings are complete. If convicted, employees are dismissed. Even when employees are acquitted or when prosecution has been suspended, our school boards make assessments to determine appropriate employee placements that will ensure the safety of our students.

As previously mentioned, Catholic school boards welcome the new reporting requirements of the bill. These new standards require us not only to report, as is presently the case, those convicted of offences, but also those who have been charged with offences. In cases where an employee has been charged, care and sensitivity for all parties are required. There are interests to be balanced, such as the protection of students, the protection of privacy and the presumption of innocence. Although the protection of students is their paramount responsibility, school boards must also ensure that in the interests of their employees, and as required by subsection 43.3(2) of the bill, the withdrawal or staying of charges or the discharge or acquittal of the accused are promptly reported to the College of Teachers. Mandatory reporting of those who have resigned while under investigation will help in the tracking of teachers who may seek employment in other school jurisdictions.

#### 1720

**Reporting requirements:** The reciprocal reporting arrangements between school boards and the Ontario College of Teachers will be most helpful to employers in their communication and record-keeping procedures and for maintaining a central record of individuals who have been charged or convicted of sexual abuse.



Application of the legislation: We appreciate that the legislation applies to all teachers employed by school boards in the four publicly funded systems in Ontario and to qualified teachers in the independent school system. We are concerned, however, that there still remain a significant number of teachers in the independent system that are not caught by this legislation. We urge the government to find a way to address this concern so that all children in Ontario can enjoy the same measure of safety and security as the legislation provides to the publicly funded school system.

Prevention programs: Abuse prevention is a moral duty and a legal duty in all school boards. Since abuse is foreseeable in many instances, the law imposes on school boards a duty to protect students from abusive circumstances where it knows, or ought to know, that the potential for abuse exists. This duty of care requires a school board to take reasonable measures to protect students from abuse and the effects of abuse. Failure to adopt such reasonable measures can cause harm to students, their families and staff, and expose the school board to liability for the harm.

Since school boards, principals and teachers are often understood by the law to stand in loco parentis to their students, or in a quasi-parental relationship, the law can impose a fiduciary duty or a duty of utmost good faith that repeats and underlines the duty of care.

In recent days the courts have imposed on employers vicarious liability for the actions of their employees relating to sexual abuse. This imposition of liability without fault on the part of the employer is an attempt to ensure the victim is properly compensated and to encourage employees to take special care to prevent abuse. School boards take these responsibilities seriously and are very aware that the key to successful prevention programs is education and training.

It must be pointed out that there are significant extra costs associated with doing this prevention work effectively. We urge the government to seriously consider providing appropriate funding so as to support the timely development and implementation of these programs in school boards.

A final matter we wish to address is the timely sharing of information on matters of child sexual abuse between school boards, the police and child protection services. It is often difficult for school boards to obtain information from these organizations, who sometimes feel that the disclosure of information may impair an ongoing investigation or court conviction. There needs to be a real effort by all government ministries to require a complete sharing of information in these matters.

In closing, we commend the government for introducing Bill 101 and pledge to work with all partners to implement this legislation on behalf of our students in the Catholic schools of Ontario.

**The Chair:** Thank you, Ms Ervin. We have a brief minute for each party if there are any comments.

**Mr Marchese:** Thank you for your submission. Quickly, if I can sneak in a couple of questions, first,

"We urge the government to seriously consider providing appropriate funding." I'm not sure whether you know how much money we're talking about, and second, do you really seriously think the government would deliver some money for you folks?

**Ms Ervin:** There is a lot of in-service and training that has to be done with not only the teachers, principals, vice-principals and superintendent, but all the staff in the schools around this legislation. The training often has to be done at times where there are significant costs involved.

**Mr Marchese:** I appreciate that. Good luck.

On page 4 you say, "Even when employees are acquitted ... our school boards make assessments to determine appropriate employee work placements that will ensure the safety of our students." If the person has been acquitted, we assume innocence, right? If that's so, shouldn't that person be put back into the environment he or she might have been in?

**Ms Ervin:** There are times when the person is acquitted for lack of evidence, but we're not that comfortable with that. Sometimes persons are acquitted in the courts because of technicalities, and the boards feel it would be better to place that teacher in another environment than with direct contact with students.

**Mr Dunlop:** I'd like to thank you for coming here this afternoon to make a presentation on Bill 101. Just a quick comment on the definition of grooming: instead of having a broader definition, what about the thought of more specialized training for all teachers in the field when it comes to identifying people who might be doing some actual grooming, or trying to identify sexual predators?

**Mr John Stunt:** The question was, would we see having extra training as a way of dealing with the grooming issue?

**Mr Dunlop:** Yes.

**Mr Stunt:** I don't know whether they're exclusive. I think that with the idea of more training in terms of the kinds of in-service we would envision for our employees, we would certainly include teaching about grooming behaviours, but I think it's important the definition capture that as well.

**Mrs Dombrowsky:** I'm very happy to report that these fine people are former colleagues of mine, so I'm especially delighted to see them here this afternoon. I have a couple of questions. I will try and roll it into one, but perhaps you would address a couple of points.

The first is with regard to the fact that while the legislation is intended to protect students, and I believe it certainly will improve the ability of school boards to offer protection to students against sexual abuse, it applies only to teachers. I was wondering, first of all, if OCSTA would have an opinion that perhaps this is an opportunity for the government to include in legislation other individuals in positions of trust in our schools, in our classrooms, and that would be volunteers, education assistants and so on.

The second part of my question relates to the point you have raised in your document with regard to the



application of the legislation. You have a concern about the fact that teachers in the independent system would not be caught by this legislation. I suggest to you that these are teachers who could ultimately come to your system and you would have no information about this previous activity. With the teacher shortage there is in Ontario, I know that boards, in their eagerness to place a qualified body in front of a group of students, might engage a teacher who was not a member of the College of Teachers when working for a private school, but is prepared to become a member now working in a publicly funded school, but may have had a history in the private system that would not have been reported.

If you could just offer some comments on those two issues, I would appreciate that.

**Ms Ervin:** I'll start and I'm sure John and Carol will have some comments to add as well.

As you know, under the Child and Family Services Act, we all have a duty to report sexual abuse or suspicion of sexual abuse, and that covers everyone. So although they are not teachers, if we suspect any of our staff in our schools, if we have suspicions of sexual abuse, we are supposed to report that to family and children's services. The Child and Family Services Act protects children only to age 16. If you have a teenager in a high school who is beyond the age of 16, where do we report this? We're not sure if we have to go directly to the police or not.

On the issue of unqualified teachers or uncertified teachers in our schools, you're correct, some school boards have had to hire them and that does cause a concern. We are suggesting that the government probably should discuss that issue with the independent schools and see how we could best address teachers who are not qualified, because I'm sure they have the same concerns as we do about the safety of their students. Somehow these teachers have to be captured in legislation somewhere.

**The Chair:** That pretty well wraps up our time. Do you have a final comment, sir?

**Mr Stunt:** I was just going to comment that in terms of the reference checks and criminal record checks of all employees, we try to be as thorough as possible and talk not only to the previous employers but to the College of Teachers, obviously, when they're qualified. In that way, hopefully we don't let them into the system.

**The Chair:** I wish to thank you for your presentation on behalf of the Catholic school trustees.

1730

#### CANADIAN FEDERATION OF STUDENTS-ONTARIO

**The Chair:** Our next delegation from the agenda is the Canadian Federation of Students. Good afternoon. We would ask you to give us your name for Hansard. Please proceed.

**Ms Pam Frache:** My name is Pam Frache. I'm with the Canadian Federation of Students. My comments will

be somewhat brief today, although I welcome this opportunity to raise a couple of concerns that we have.

Like many of the previous speakers, for sure our organization welcomes this effort that's being made to protect the children in the school system in Ontario. We understand it is a difficult issue to address, so we applaud the initiative most definitely.

I'd like to agree with many of the issues that have been raised by previous speakers, especially those issues raised by the Canadian Hearing Society. It is true there are very few resources for students with disabilities in all of our education system, from elementary school right through to the post-secondary system. We strongly support the idea that additional special education and sensitivity training be made available to teachers on their way through school themselves, and also regarding expanding access and availability of a variety of interpretation and other special services for all students with disabilities and special needs.

For us, however, there really are two areas of concern we have with the legislation. Hopefully folks here will be able to address these concerns now. It's mainly the question about why this legislation isn't actually being applied to the private system, because it seems to me that all the students in the system require these kinds of standards. It seems to me there is a bit of a double standard that is emerging with respect to private schools in the area of teacher testing and so forth. Especially with legislation such as this, one would think it would apply to both the public and private systems. I'm hoping it's not that people just presume that, because it's part of a private system, somehow these issues are not going to emerge, because I think we all know that's not the case.

The only other area of concern, given that teachers will be reported even when there have only been allegations of abuse and misconduct, is that there is going to be a clear mechanism to ensure there is also a very speedy reporting when there has been a thorough investigation and it's found that the charges have been cleared. As people can appreciate, it would be quite damaging to the reputation of an individual if those who are accused are not also publicly acquitted.

I'll keep my comments to that. I'd be happy to answer questions, or perhaps you can enlighten me.

**The Chair:** We have about five minutes for each party. I'll begin with the PCs.

**Mr DeFaria:** I would like to thank you for coming forward. Your presentation was right to the point. It's important for the federation of students to participate at hearings and bring us the viewpoints of students, because they are people who have gone through the system later than anyone else. Thank you very much for coming.

**Mr Beaubien:** One of the concerns you mentioned was that there should be a speedy way of dealing with those who have been wrongly accused. But the reality is that once you're branded that you've sexually abused one child or children or whatever the case may be, whether you're guilty or not, you've been branded. Whether you are acquitted by the system, in the public community



there are a lot of people who still look with a suspicious eye.

How would you deal with that? I don't think we can deal with it, but have you got any suggestions?

**Ms Frache:** I think the biggest problem is that often-times the things that tend to get reported are the accusations, but not necessarily when there has been a thorough investigation. I would just like to premise this by saying that I don't think there's any intention to suggest that there are going to be a vast number of people who are wrongly accused, because I don't believe that's the case, especially with children. But on the odd occasion that that does take place, I think just making sure that every effort can be made to make sure the facts are made public, because the tendency is that the things that capture people's imaginations are the accusations and not necessarily the acquittals.

It is true that it's hard to undo things that have already been done, but I think that if there is basically a fair process implemented by which people do have a chance, do have their day in court, so to speak, and that it's properly reported and it's not something that's going to languish for two years while it's sorting itself out—if the process can be as speedy as possible and decisions made, clearly I think that would be effective.

**Mr Beaubien:** Thank you.

**The Chair:** Further comments? I'll go to the Liberals.

**Mrs Dombrowsky:** I appreciate your presentation this afternoon.

I did want to inquire about the fact that the act is intended to protect students. I was wondering if you would have any comment about the fact that when students arrive at school, they encounter a number of adults in the course of their day. There are many individuals who have positions of trust with students, and yet the bill makes reference only to the conduct of teachers.

I was wondering if you have a comment or an opinion on how this legislation might be improved or strengthened, if you think that would be appropriate, so that other individuals who are in positions of trust in the daily lives of students—it might be their educational assistant, it may be the custodian, it may be the secretary, it might be the speech pathologist or the psychometrist who comes to meet them on a regular basis. Do you have any comment about the other individuals who meet children daily or on a regular basis and who have an opportunity to abuse them, although they're not caught in this legislation?

**Ms Frache:** I'm not an expert in terms of amending this particular legislation, but our feelings are always that if you can actually educate children enough and create enough self-empowerment and awareness and mechanisms through which they themselves can begin to identify experiences that they have—I think this speaks to a broader issue in terms of having adequate counselors and so forth who can spend time with students, because workload issues obviously have an impact in terms of whether or not students feel they have enough of a relationship with somebody in the school system to be

able to report on incidents that may involve non-teaching staff.

Again, as I say, for our organization, trying to create space and sort of empowerment for students themselves is a key factor. I think that's why some of the previous comments about sensitivity training and so forth could actually be expanded to all students so that students themselves—on the one hand, there are ways of reporting abuse when it takes place, but there are also ways of empowering students themselves so they themselves can help to head off abuse before it actually emerges. But I think that requires some investment in the school system itself to create those kinds of avenues and programs for students.

**Mrs Dombrowsky:** Are you suggesting that people who are not teachers would be held to a different standard, that teachers would be held to one standard and other employees would have a different standard?

**Ms Frache:** I think high standards for all is ultimately the goal, both the private and the public systems, very much so. I'm just not completely sure how you would accomplish that through the legislation itself.

**Mrs Dombrowsky:** Do you think police checks would be sufficient? Do you think that's good enough for the non-teaching sector?

**Ms Frache:** I think it's a start, for sure.

**Mr Marchese:** I want to thank you, Pam, for taking the time to come and make some comments on the bill.

One of the things that concerns us and that obviously concerns you is how this bill covers, or does not cover, those who teach in the private school system. Clearly it captures the certified teachers in the private schools, so it's not as if there's some oversight. They know, and they are saying those who are certified will be covered. So we know they understand that issue very well.

But it surprises me a great deal—I'm sure it surprises you too—because part of the objective of the bill is to make sure that we prevent sexual abuse and that we catch sexual predators the best way possible. That's what this bill was intended to do. Given that intention, it really surprises me and somewhat amazes me that certain people within the private schools, those who are not certified teachers, who obviously teach those young men and women, are not covered by the law. It must be a puzzle to you too that it doesn't cover those people. What do you think?

**Ms Frache:** I was actually hoping that someone from this committee might answer that as a question from me, because again it seems to me that it's a double standard that is emerging where there's some notion that the same standards don't have to apply to the private system. If someone could answer that question for me, that would be very useful. Is there a reason?

**Mr DeFaria:** The parliamentary assistant, I guess, on a point of order?

**Interjection:** He's the expert.

**Ms Frache:** Just the thinking between the kind of double standard between the public system and the



private system, just for my own enlightenment, What was the thinking behind that?

**Mr Marchese:** The fact that non-certified teachers are not covered.

**Mr Dunlop:** The focus of the bill is between the Ontario College of Teachers and sexual predators in the school, and we're dealing with that legislation only. That's what the bill focuses on at this time. We're listening to other comments as we go around the tables and as we listen to stakeholders and people like you; we listen to your comments about how they would impact on non-certified teachers in private schools.

**Mr Marchese:** But they're teachers, Garfield. In the private system they are teachers; they're not certified, but they are teachers. How do you deal with that?

**Mr Dunlop:** I understand that, and that's why I said the focus of the bill is between the Ontario of College of Teachers and—as I told you earlier, it doesn't deal with janitors—

**Mr Marchese:** So maybe those people shouldn't be teaching. Is that it?

**Mr Dunlop:** I told you the focus of the bill was between the Ontario College of Teachers—

**Mr Marchese:** What about those poor students who might be subject to abuse?

**Mr Dunlop:** You can suggest amendments to it, then.

**The Chair:** Anything further, Mr Marchese?

**Mr Marchese:** No. Thank you for coming. Thank you, Toby, for allowing that.

**The Chair:** Thank you, Ms Frache. I appreciate your presentation on behalf of the federation of students.

Seeing no further discussion, this would conclude this afternoon's hearings. I would remind the committee that Friday, November 2, is the deadline for amendments for Bill 101 and also Bill 69. The deadline is 12 noon.

We reconvene on Monday, November 5, to continue with Bill 101, and on Tuesday, November 6, we consider Bill 69.

Seeing no further discussion, committee adjourned.

*The committee adjourned at 1744.*











## CONTENTS

Tuesday 30 October 2001

<b>Student Protection Act, 2001, Bill 101, <i>Mrs Ecker</i> / <b>Loi de 2001 sur la protection des élèves, projet de loi 101, <i>M<sup>me</sup> Ecker</i></b></b>	J-557
Ontario Public School Boards' Association.....	J-557
Ms Liz Sandals	
Ontario College of Teachers .....	J-560
Mr Larry Capstick	
Mr Joe Atkinson	
Ricketts, Harris.....	J-563
Mr Michael Cochrane	
Canadian Hearing Society .....	J-566
Mr Gary Malkowski	
Ms Beverly Pageau	
Ontario Catholic School Trustees' Association .....	J-569
Ms Louise Ervin	
Mr John Stunt	
Canadian Federation of Students—Ontario .....	J-572
Ms Pam Frache	

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### Chair / Président

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### Vice-Chair / Vice-Président

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### Substitutions / Membres remplaçants

Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington L)

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Mr Rosario Marchese (Trinity-Spadina ND)

#### Clerk / Greffier

Mr Tom Prins

#### Staff / Personnel

Ms Elaine Campbell, research officer,  
Research and Information Services

CA 201  
XC 14  
- 577

Gouvernement  
du Québec



J-23

J-23

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 5 November 2001

# Journal des débats (Hansard)

Lundi 5 novembre 2001

**Standing committee on  
justice and social policy**

**Comité permanent de la  
justice et des affaires sociales**

**Student Protection Act, 2001**

**Loi de 2001  
sur la protection des élèves**

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Monday 5 November 2001

Lundi 5 novembre 2001

*The committee met at 1551 in room 151.*

## STUDENT PROTECTION ACT, 2001

## LOI DE 2001

## SUR LA PROTECTION DES ÉLÈVES

Consideration of Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students / Projet de loi 101, Loi visant à protéger les élèves contre les mauvais traitements d'ordre sexuel et à prévoir autrement leur protection.

**The Chair (Mr Toby Barrett):** Good afternoon, everyone, and welcome to this regular meeting of the standing committee on justice and social policy for November 5. The agenda for this afternoon: Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students.

There are two orders of business. We do have a delegation, and we would follow that presentation with clause-by-clause consideration of the bill.

## CHILDREN'S AID SOCIETY OF ALGOMA

**The Chair:** I would now ask the Children's Aid Society of Algoma to come forward. Good afternoon, sir. We have 20 minutes for your presentation. You many want to leave time for any comments or questions from committee members. For the purposes of Hansard, we would ask for your name, please.

**Mr Hugh Nicholson:** I'm Hugh Nicholson, and I'm the executive director of the Children's Aid Society of Algoma.

**The Chair:** Please proceed.

**Mr Nicholson:** The Children's Aid Society of Algoma thanks the standing committee on justice and social policy for being given the opportunity to present a response to Bill 101. The prevention of institutional abuse is an important part of every children's aid society's legal mandate, and each year CASs investigate thousands of reports of child sexual abuse. I might add that investigations of teachers or staff employed by school boards is only a small proportion of that.

Most of these investigations are joint investigations with police forces such as the Ontario Provincial Police or Sault Ste Marie Police Service. The roles of the police and CAS, however, are quite distinct. Police forces investigate the possible commission of a crime, and

before charges can be laid they must be reasonably sure there's sufficient evidence to prove beyond a reasonable doubt that a criminal act has occurred. CASs not only investigate harm to children but also risk to children. CAS investigations therefore have a preventative focus in which they must determine, based on a balance of probabilities, whether or not there's the pattern of behaviour that would indicate risk of harm to children.

While CASs investigate harm to children or the risk of harm, they are also involved with children as caregivers long after the completion of the investigation to ensure the safety and well-being of these children. In some instances this may mean bringing children into the temporary or permanent care of the society.

Because of the role CASs play in the prevention, investigation and treatment of child sexual abuse, they have a solid understanding of the factors involved as well as possible solutions.

In addition, the Children's Aid Society of Algoma had the opportunity to explore possible legislative options to preventing child sexual abuse through their involvement with Bill 118, which was presented in the previous sitting of the Legislature. Bill 118 proposed changes to the Child and Family Services Act to prevent institutional abuse. That would also include abuse by employees under the school boards. Hopefully Algoma's experience will be useful in strengthening Bill 101.

The Children's Aid Society of Algoma also appreciates the intent of Bill 101 and the efforts it makes to track professional misconduct and prevent child abuse. While supporting this direction, the society believes, however, that Bill 101 has a number of weaknesses. In this presentation we'll outline some of those weaknesses.

Part I, "Amendment to the Education Act:" Part I of the legislation will not prevent the type of abuse reported by Justice Robins in his report Protecting Our Students. As we've seen in the DeLuca case and reports prepared by Goldie Shea for the Law Commission of Canada, the abuse usually goes on for years before there is enough evidence to support criminal charges and/or criminal convictions. Therefore, changing subsection 170(1) of the Education Act to ensure teachers "charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors, or of any other offence under the Criminal Code (Canada) that in the opinion of the board indicates that pupils may be at risk, take prompt steps to ensure that the teacher ... per-



forms no duties in the classroom and no duties involving contact with pupils, pending withdrawal of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be" will only protect a very small minority of children from being abused.

The wording proposed in Bill 101 implies that if charges are dropped or the person is acquitted there is no risk to children. Justice Robins highlights that in his report, and I'll refer to that section. On page 203 he's saying, "The member need not have been found guilty of a crime where the conduct is otherwise proven before the disciplinary committee." So it goes beyond the fact that when somebody isn't proven guilty of a crime it doesn't necessarily mean that children aren't at risk of being abused.

In many instances, children's aid societies are involved in the investigation of reports of sexual molestation or sexual exploitation of children years before criminal charges are laid. Unfortunately, there are no provisions in the Education Act or the Child and Family Services Act which allow children's aid societies to report their findings to school boards.

In addition, individuals charged with sexual abuse may plead to a lesser offence of a non-sexual nature. This creates a number of difficulties for school boards. For instance, if the courts are now saying that it was not sexual abuse, can the school board even report it to the College of Teachers? In some circumstances, the school board may not even be aware of the details that have led to the charges.

Since these investigations are jointly conducted with children's aid societies, and the role of the CAS is both enforcement and prevention, being informed of CAS findings would help resolve this problem. Inclusion of confirmed reports of child abuse by CAS in subsection 170(1) of the Education Act would significantly increase the education system's ability to prevent and end child abuse. This section would also include protection for CASs when making these reports, or should also include that.

Also, there's no mention in section 170 of other staff who are employed by the school board and may have contact with children and be perceived by children as people with authority over them. Justice Robins's report points this out on page 186. This includes maintenance staff, teachers' aides, bus drivers etc. We believe that consideration should be given to including them in this section.

Under part II, "Amendments to the Ontario College of Teachers Act," we believe the definition of sexual abuse is very limited and excludes many of the behaviours that are clearly forms of professional misconduct that place children at risk. If Bill 101 intends to protect children, then consideration should be given to expanding it to include grooming behaviours and the various forms of coercion that are recognized patterns of people who sexually exploit and molest children. What we're really saying here is that we're not talking about isolated situations or any sort of employee misconduct in any area; what we're looking for is a pattern of behaviour that

clearly indicates there is a problem, and that pattern of behaviour would also have to be based on solid evidence.

Under this, we feel that a better definition is the definition recommended by Justice Robins in his recommendation 7.2, where he defines "sexual misconduct" rather than "sexual abuse" and provides some detail on this that then covers some of the areas I've just discussed.

#### 1600

Another section that we feel could be strengthened is the reporting requirements related to professional misconduct, part IX.1. Subsection 43.3(1) should not be limited to charges or offences under the Criminal Code. This section should also require employers to report any professional misconduct that is reported during the course of the child protection investigation. This would ensure that the Ontario College of Teachers had access to this information, and it would encourage school boards to give careful consideration to this information.

We believe there should also be a subsection that holds teachers accountable for reporting sexual misconduct. I think Dr Northan, the medical officer for Algoma, also recommended this in his presentation under Bill 118 in the Soo. We can see from Justice Robins's report that peer pressure, the status of the offender and fears about one's own personal liability are deterrents to reporting suspicions of child abuse. There is also the belief that the recent changes to section 72 of the Child and Family Services Act will ensure that suspicions are reported in the future. While duty to report, section 72 of the CFSA, has been strengthened, many teachers and principals do not understand this legislation, and the very short statute of limitations under the Provincial Offences Act makes it difficult to hold professionals accountable. An accountability section in the Ontario College of Teachers Act would be a more effective measure for ensuring teacher accountability.

Part III, "Amendment to the Teaching Profession Act:" the exemption under section 12 should include reports of all abuse by a teacher, not just sexual abuse. In the course of our investigations we have found section 12 to be a deterrent to reporting any form of abuse by teachers. The wording also says that a "member need not provide him or her with a copy of the report."

In some instances, providing a member with a copy of the report could hinder the investigation. While we want to protect the rights of teachers, the protection of students from abuse should be a higher priority. Therefore, this section should be reworded to allow police and children's aid workers to control the release of these reports when necessary.

In conclusion, this week the government of Canada is proposing their share of the financial settlement for cases involving the abuse of 800 or more native children in residential schools. Unfortunately, if the proposed wording in Bill 101 were in place then, we would still be facing the same settlements. If history is not to repeat itself, we need stronger measures than those proposed in Bill 101.

Just as these native families did years ago, we as parents entrust our children to the care of the educational



system during a very vulnerable and critical period in their development. As we do so, we worry about our children's progress and their adjustment to a system that has a significant impact on their future opportunities. If everything goes well, this can be a wonderful experience for children. They make friends, learn to respect people in authority and learn new skills that make them more confident and competent people. There are the rough spots, but that is also part of growing up and learning how to live in the broader community.

The events described by Justice Robins and by Goldie Shea have no place in our school system. Bill 101 is Ontario's chance to make this possible. If the recommendations outlined by the Children's Aid Society of Algoma, as well as the recommendations of other participants, such as the Ontario College of Teachers, are incorporated into Bill 101, we should be able to eliminate the threat of sexual abuse in schools. We therefore encourage the Legislature to take the time required to make the necessary changes.

**The Chair:** Thank you, Mr Nicholson. That would leave about two minutes for each party for any questions or comments. I'll begin with the Liberal Party.

**Mr Gerard Kennedy (Parkdale-High Park):** I just wanted to ask, was the children's aid society consulted by the government prior to their bringing forward Bill 101?

**Mr Nicholson:** No, there was no consultation with our CAS, at least. I'm not sure if there were consultations with the Ontario association, although I probably would have heard about that, given my interest in this.

**Mr Kennedy:** I want to be clear. You're telling us essentially that the legislation we have in front of us would not prevent much of the abuse that took place in the first instance. In other words, for the benefit of the people of Ontario, the abuse that took place that Justice Robins investigated and then expanded to province-wide recommendations would not be covered by the kind of legislative remedy the government has put forward today.

**Mr Nicholson:** In our opinion, you're correct that it wouldn't be covered. Some of the provisions under Bill 101 I think even create some confusion, which may increase the vulnerability of children.

**Mr Kennedy:** In a related matter, Justice Robins also made other specific recommendations. You refer to definition. He also talked about resources for prevention. He made, not a long list, but a very specific list of where that could be beneficial. They're not referred to in the act either. How important are those resources to preventing a recurrence of what happened with the DeLuca case?

**Mr Nicholson:** I think they're very important, and one of them is the education of teachers in the whole area of patterns of behaviour which would indicate risk to children. There's a lot of confusion, when we talk about that, around what that really means. Teachers are really worried about it, and administrators. Because they're not very knowledgeable of it, they really misinterpret, I think, some of the things we're saying here.

**Mr Kennedy:** As a child protection professional, can you think of any reason why children in private school settings should not be extended the same protection as those in public schools?

**Mr Nicholson:** No, I can't, and I think they should be. Any private or public schools should be included under this.

**Mr Kennedy:** So your summary advice is to wait and get it right.

**Mr Nicholson:** Yes. We're changing three pieces of legislation. That's a rare opportunity, and I think we really need to make sure we do it properly while we have the public interest in doing this.

**The Chair:** Thank you, Mr Kennedy. For the New Democratic Party, Mr Marchese.

**Mr Rosario Marchese (Trinity-Spadina):** Thank you, Mr Nicholson, for your submission. I found it very helpful, and I'm saddened a bit because it would have been perhaps useful to have had your submission last week—

**Mr Nicholson:** A little earlier.

**Mr Marchese:** —because you may know that the Liberals have some amendments. Of course, your amendments are not here. They may have been reflected by the government; I'm not quite sure. I was going to ask you the same question: were you—not you, but CASs generally speaking—consulted? When you say, "Unfortunately, there are no provisions in the Education Act or the Child and Family Services Act which allow children's aid societies to report their findings to school boards," that would be a very easy inclusion to be making. Whatever you do, and the work you've done, that uncovers any particular problem as it relates to the school system, teaching and non-teaching, they would benefit from it, and we would all worry about your findings if they relate to a teacher or non-teaching staff as it relates to potential sexual abuse. Your findings would be of importance to us.

I'm not quite sure what the government members think or what Mr Dunlop, who is the parliamentary assistant, has to say about some of the questions you've raised. That one in particular is useful to me, and reporting requirements is interesting.

I thank you for your submission. I think it would have been helpful. I don't know whether Mr Dunlop is going to ask any questions or whether he's going to say, "Would that we'd had your suggestions before or that we had consulted you before because we might have been able to incorporate some of your suggestions." I don't know. I'll wait and see what Mr Dunlop has to say. Thank you for coming.

**The Chair:** Thank you, Mr Marchese. Mr Martin, a quick question?

**Mr Tony Martin (Sault Ste Marie):** There's another case happening in Sault Ste Marie right now of even greater severity, if I read it correctly, where a person abused children over a long period of time and didn't get caught until recently, some people coming forward and making the case. In light of Bill 101 and your comments,



would Bill 101 have been useful in that instance or would we have needed what you're suggesting here today?

1610

**Mr Nicholson:** The problem is that by the time charges are laid or somebody is convicted, in either case, the issue I think reaches the public and something then is done about it, whether it's in legislation or not—just the liability of school boards and the public awareness of it. Unfortunately, as we've seen by the hundreds of cases identified by Goldie Shea in the law commission reports and as we've seen in Sault Ste Marie, that abuse goes on for 10 or 20 years before those charges are laid.

When children's aid societies do joint investigations, at times the police pretty quickly say, "We don't have enough evidence for a conviction." Certainly our role is the prevention of child abuse, and we have a lot of evidence in the very early stages that this behaviour is posing a big risk to children. At times we even wonder—or there may be some fairly clear evidence—that based on a balance of probabilities, abuse is probably going on. If that information could be given to school boards, I think it could protect a lot of children a lot earlier and prevent a lot of this abuse from continuing for years and years.

**Mr Martin:** To respond as well to some of the concern that is raised by professional associations that might represent people who are in supervisory capacities over children, if you discover early that there's a pattern, you can not only protect the children, but it seems to me you could also suggest to the school board a process of counselling and perhaps healing for somebody who needs some professional assistance or advice in these circumstances, and not only help one side but help both sides in this whole very difficult and terrible reality that happens out there.

**Mr Nicholson:** I agree. It really would be to the benefit of both parties. It would prevent further abuse of children, and it could potentially end a pattern of behaviour that could become more damaging.

**Mr Martin:** What you're saying as well is that if the children's aid society has the power it needs to do the investigation and report, in fact remedies could be recommended that don't necessarily include the police or the courts. Is that correct?

**Mr Nicholson:** I think if we could give that information to school boards and if there are provisions in the legislation to make them aware of that, then the mechanisms already exist within their own system for addressing this, either in the employer-employee relationship or through the College of Teachers.

**The Chair:** I'll go to the PC Party.

**Mr Garfield Dunlop (Simcoe North):** First of all, I want to welcome you here today. I know it's a long drive to come down, and we appreciate your comments.

I'm curious: since the trouble in the Soo and Justice Robins's report and recommendations, can you say at this time whether you've been able to identify a lot more increases or decreases in incidents or drum up more attention to this problem in that region of the province?

**Mr Nicholson:** Actually, when we look at our reports of abuse by teachers, or allegations of abuse, we probably get about 10 or 15 a year across both school boards in Algoma. That's been a pretty stable number for our society over probably the past 10 years. I think the awareness has gone up. I don't know the numbers this year, but my impression is that there has been more sensitivity and more of an increase in reports. I think when administrators or teachers see things, particularly in Sault Ste Marie because of the attention these two cases have had, there is more sensitivity to that. Our worry is, will that sensitivity be there in a few years when these issues pass and other priorities come to the front?

**Mr Dunlop:** How much of that information do you share with the school board now?

**Mr Nicholson:** We share quite a bit with the school board, although that isn't a standard practice across the province for children's aid societies. Government regulations or government policy actually prohibit us from doing that, but because of the situations and the risk to children that we've seen, we feel we need to do that, just in all good conscience. What we'd like is provisions in legislation to give us better protection so we don't end up in civil court.

**The Chair:** Thank you, Mr Nicholson. On behalf of the committee, we appreciate your presenting on behalf of the Children's Aid Society of Algoma. That concludes the delegations, so I declare that order of business closed.

Our next order of business is clause-by-clause consideration of Bill 101. I'll put the question to the committee: are there any comments, questions or amendments and, if so, to which section or sections of Bill 101? We'll begin with the Liberal Party.

**Mr Kennedy:** I have some amendments. I have to say that I need the co-operation of the members of the committee in order to present some of these amendments, so I wonder if I could just give a very brief preamble as to why.

I think we've heard from numerous people giving testimony that the scope of the bill is too narrow. In order for an amendment to be made that would address that particular concern and requirement of this opportunity we have with Bill 101 to fully address the circumstances Judge Robins set out, it is necessary for other parts of the Education Act and potentially the Teaching Profession Act to be amended. So in putting forward some of the motions I have, I am looking for unanimous consent that they be considered. Hopefully you, as members of the committee, would also consider them on their intrinsic merits, but I understand from speaking with legislative counsel that I would need unanimous consent not to have these just ruled out of order. I would like to believe that in deference to the testimony we just heard, and earlier testimony, we would at least give consideration to the changes that are inherent in the amendments I'm putting forward.

Mr Chair, with that, if you like, I could ask for unanimous consent before presenting an amendment—I understand mine is in the first sequence—and see whether that is the wish of the committee. Do you wish to seek that?

**The Chair:** You would have to read your amendment to the committee and make a motion.

**Mr Kennedy:** OK, I'm happy to do that.

I move that the bill be amended by adding the following section:

"0.1 Subsection 11(1) the Education Act, as amended by the Statutes of Ontario, 1993, chapter 11, section 11, 1996, chapter 12, section 64 and 1997, chapter 31, section 7, is further amended by adding the following paragraphs:

"screening of persons applying to work in schools

"28. requiring screening, including but not limited to criminal record screening and disciplinary record screening, by boards of teachers, temporary teachers and other staff members, including but not limited to educational assistants, custodians, clerical workers, technicians, psychologists and testers, who apply for employment in schools governed by a board;

"screening of certain volunteers

"28.1 specifying classes of persons who volunteer to participate in activities in schools governed by the board and requiring screening, including but not limited to criminal record screening and disciplinary record screening, by boards of persons in the specified classes, in a manner and to an extent consistent with the functions and voluntary status of the persons in each of the specified classes;

"education to prevent abuse

"28.2 requiring education and training by boards of staff and volunteers who perform duties or functions in schools governed by boards, and requiring education and training by boards of pupils enrolled in those schools and the parents of those pupils, to provide them with appropriate knowledge about what constitutes sexual and other types of abuse and how to protect pupils from sexual and other types of abuse."

**The Chair:** That amendment is out of order. I will present a ruling, referring to Beauchesne's Parliamentary Rules and Forms, the section titled "The Admissibility of Amendments in Committee:"

"(8)(a) An amendment may not amend a statute which is not before the committee.

"(8)(b) An amendment may not amend sections from the original act unless they are specifically being amended in a clause of the bill before the committee."

**Mr Kennedy:** Again, I seek unanimous consent for consideration of this, because I understand with unanimous consent we could have this considered.

1620

**The Chair:** Do we have—

**Mr Kennedy:** I wonder if I could speak to that very briefly?

**Mr Peter Kormos (Niagara Centre):** Mr Chair, on a point of order: I trust that the goal of this committee is to address—because this isn't going to be revisited for a good chunk of time. All three caucuses in the Legislature are in agreement. You heard that during the course of second reading debate around this bill, and I trust you're going to see a similar agreement when the bill gets to

third reading. Here's an effort. If there are arguments to be made against these—

**The Chair:** Mr Kormos, that is not a point of order.

**Mr Kormos:** No, but I'm engaging in the debate.

**The Chair:** You are, correct, but that is not a point of order.

**Mr Kormos:** That's OK, but I'm engaging in the debate. I have the floor.

**The Chair:** We have a request for unanimous consent.

**Mr Kormos:** Well, no. You had interrupted that, as I recall.

**Mr Kennedy:** Are we not permitted to speak to the request for unanimous consent, Mr Chair?

**Mr Kormos:** If Mr Kennedy withdraws it, I can speak to this briefly, because we can re-present that request for unanimous consent at any time, can't we, Chair?

**The Chair:** I'll check with the clerk whether it's appropriate to debate a motion that has been ruled out of order.

**Mr Kormos:** But I'm simply—

**Mr Kennedy:** With respect, Mr Chair, I did request unanimous consent before you made a ruling. I think it's only proper that the committee be given the chance to consider that request for unanimous consent. With all due respect, Mr Chair, I made that my opening comment in presenting this amendment. I was then asked to read the amendment, I thought so we could entertain the discussion of unanimous consent that I did request. I'm sure Hansard will support that, Mr Chair. I opened up saying that I would need unanimous consent in order for this to be brought to the committee's consideration, and I am still seeking that.

**The Chair:** OK, Mr Kennedy, do you wish to stand down your request for unanimous consent and undertake debate by the committee of this amendment which has been ruled out of order?

**Mr Kennedy:** I'm happy to do so if that will enable debate.

**The Chair:** Yes. We'll start with the Liberals and then the NDP.

**Mr Kennedy:** Let me just speak very briefly, and I'm sure there will be some interesting comments that are already engaged by the member from Niagara. In essence, this particular amendment speaks to some of the gaps in the bill that were basically suggested. There are other classes of people found in the Robins report, found in the situations of Mr DeLuca, that should be included. It makes sense to me that if we're going to be opening up an area of legislative purview where we say, "We need to make laws to protect children"—and that's what Bill 101 obviously does—we do so in as logical and comprehensive a fashion as we can and not stigmatize any one class of people. In this case it's teachers in the public education system, but I think the thrust of this bill, if I understand the minister's explanation, is that anyone in a position of authority should be subject to some level of screening and some level of sanction if they step out of line.



This particular motion addresses that by requiring screening to take place for other people. Actually, I believe Bill 81 provides for background checks for teachers; this adds other classes of people who would be subject to screening, including volunteers. And it does stipulate here only "to the extent necessary," so we wouldn't put onerous requirements on volunteers.

It also stipulates something that Robins asked for very explicitly. In about seven different places, he asked for education. He says, in fact, in the report that the main burden of his report, the most important finding in his report, is the need for prevention. In other words, if we don't entertain this amendment, or amendments like this, we will walk away from this committee not having dealt with the principal thrust of the Robins report. We will not have done our duty, I would suggest, in the sense of seeing a balanced bill that goes forward that will allow the greatest deal of protection that we in this Legislature have an opportunity to provide.

I would say to you, as members of the committee, that while the rules of order may say this is a difficult motion, it is squarely within the spirit of what I understand the Minister of Education and the parliamentary assistant say the bill is meant to address. I would really be sadly misinformed, I guess, if that turned out not to be the case. I take the minister's and the parliamentary assistant's comments at face value that the only object in this bill is to afford greater protection. If we accept in this Legislature, as we're asked to in Bill 101, the idea that to get greater protection for students, we have to have special laws, because there's a special relationship between students and people of authority in the school setting, then it follows very logically—and Justice Robins identifies it in many instances. In fact I think in every recommendation he includes these other classes of people who will come in contact and who will form authority bonds with students and should be subject to this other extra protection that we're going to afford them and this extra amount of scrutiny that we're asking to be provided. It seems to me, without that, it does leave a big hole in our credibility in terms of bringing this bill to conclusion.

If we think about the school day and all those circumstances where children are in the hallways, in the playgrounds, in washrooms that are being cleaned, they're in a whole bunch of situations and they're not in the direct care of their teachers. I would be very happy in this debate to learn from the government's side why that was a deliberate exclusion or, if it isn't an exclusion, maybe we could have their support to have this brought back into the purview of this debate. Again, that's what I'm seeking.

**The Chair:** Further comments?

**Mr Kormos:** Very briefly, I'm encouraging the committee to give unanimous consent should it once again be sought. I understand the ruling of the Chair and I accept it, but I also interpret and perceive the ruling of the Chair as being the most conservative application of the rule. Clearly, the Education Act is one of the bills being

amended by this bill before the Legislature now, no two ways about it. So in that respect, there is at the very least some consistency.

A more important issue, and it's already been referred to by Mr Kennedy, is that, no two ways about it, Bill 101 is very much in no small part a response to the Robins report, number one. The amendments contained in this motion are amendments which derived their thrust from the Robins report. It's an incredibly non-partisan motion. It's one that is designed to make this bill more effective and better than what it is, with the concession being that the bill, as it stands, has some significant value.

Very briefly, understand this from a practical point of view. And please, I don't want to defeat my argument by appearing partisan, but the reality is—and it's been a matter of a whole lot of debate—that there's a whole lot more contracting out in schools. The reference to, let's say, custodians is a very relevant one because no longer in a school milieu is there necessarily, because of the phenomenon of contracting out—and again, you know my views on that. It's a totally different issue, but the fact is that contracting out is happening. In days gone by, the custodian—male or female—was in that school for decades, saw generations of kids graduate from that school and was part of that broader and tight-knit school family or school community. Now with the phenomenon of contracting out, you've got people coming into school contexts, into school grounds, into school buildings, even into classrooms on a very ad hoc basis.

I think the realities of 2001 and the fact that this amendment very much joins with what is the clear government intent in putting this bill forward makes the amendment worthy of debate. Should the government decide to vote it down, so be it, but, please, don't avoid the debate and the need to reflect on the validity of these amendments by simply relying upon it being technically out of order when in fact you can put it back on the table in this context, in this committee, in this debate, by participating in the unanimous consent.

**The Chair:** Any further discussion or comments? Seeing none, Mr Kennedy.

**Mr Kennedy:** I'll be guided by you, Mr Chair, the clerk and then perhaps other people in terms of the procedure, but I would like to ask again for unanimous consent. I'm wondering if that can stand as a separate motion, or do I have to have that inherent when presenting the amendment? I wonder if I can get a ruling as I don't wish to take up an inordinate amount of time.

1630

**The Chair:** I think once an amendment is declared out of order, you can, at that point, request unanimous consent.

**Mr Kennedy:** I guess I would ask for unanimous consent of the committee for the motion to be received and moved. This is not support for the amendment but rather that it be considered.

**The Chair:** And I would ask the committee, very simply, is there unanimous consent?

**Mr Dunlop:** Mr Chairman, we don't have unanimous consent on this side.



**The Chair:** There is no unanimous consent.

I would ask the committee now if we would move to Liberal motion number 2.

**Mr Kennedy:** I will present this motion, Mr Chair. I move that the bill be amended by adding the following section:

“0.1.1 The Education Act be amended by adding the following section:

“11.1 Money required to fund the screening, education and training required under paragraphs 28, 28.1 and 28.2 of subsection 11(1) before April 1, 2002 shall be paid out of the consolidated revenue fund and thereafter shall be paid out of the money appropriated for that purpose by the Legislature.”

I appreciate that this motion is out of order, and I'm sorry we couldn't find an in-order means to propose it. It is a message I want to make sure the government side has, that this bill doesn't contain the resource amendment that would make this a serious bill to prevent abuse. There is no part of this bill that actually gives the funding that Robins asked for in six different places. He said that the provincial government has the responsibility to ensure that victimized students obtain counselling and therapy; screening of teacher applicants and reference checks; drafting more comprehensive policies and protocols; providing adequate training and training materials; resources to conduct an adequate investigation of allegations, including support and counselling; and resources to deal with litigations extending from false allegations. He's asked the provincial government to provide those.

I would say that unless there's some assistance we can obtain from the clerk to make this an in-order motion, I would not seek unanimous consent but rather have those comments on the table or ask if there is any other assistance I can obtain to make this something we can consider today.

**The Chair:** Mr Kennedy, this amendment is out of order, contravening standing order 56. The problem is that it has made reference to the consolidated revenue fund. I can give a ruling if the committee wishes. Again, referring to the standing orders of the Legislative Assembly: “Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown.” We would not ask for unanimous consent on that.

**Mr Kennedy:** I understand. I'm not contesting that. I understand it's ultra vires. The committee can't do that.

**The Chair:** Thank you. Now, I would ask the committee to consider Liberal motion number 3.

**Mr Kennedy:** I very much wish to speak to this motion ahead of time, Mr Chair. This is another level-playing-field amendment that would seek to put private schools in this province on a level playing field. I can read this into the record—some of it is self-explanatory—and then provide for it—

**The Chair:** Yes, normally we would read the amendment for the committee.

**Mr Kennedy:** OK. I move that the bill be amended by adding the following section:

“0.1.2 Section 16 of the Education Act, as amended by the Statutes of Ontario, 1996, chapter 11, section 29, is further amended by adding the following subsections:

“Regulations, prevention of abuse

“(10) The Lieutenant Governor in Council may make regulations in respect of private schools,

“(a) requiring screening, including but not limited to criminal record screening and disciplinary record screening, by persons concerned in the management of private schools, of persons employed to teach in private schools and of other staff members, including but not limited to educational assistants, custodians, clerical workers, technicians, psychologists and testers, who apply for employment in private schools;

“(b) specifying classes of persons who volunteer to participate in activities in private schools and requiring screening, including but not limited to criminal record screening and disciplinary record screening, by persons concerned in the management of private schools, of persons in the specified classes, in a manner and to an extent consistent with the functions and voluntary status of the persons in each of the specified classes;

“(c) requiring education and training by persons concerned in the management of private schools of staff and volunteers who perform duties or functions in those schools, and requiring education and training by persons concerned in the management of private schools of the pupils enrolled in those schools and the parents of those pupils, to provide them with appropriate knowledge about what constitutes sexual and other types of abuse and how to protect pupils from sexual and other types of abuse.

“Duties, charges and convictions

“(11) Every person concerned in the management of a private school shall,

“(a) on becoming aware that a person employed to perform duties in the school has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors or of any other offence under the Criminal Code (Canada) that, in the opinion of the person concerned in the management of the school, indicates that pupils may be at risk, take prompt steps to ensure that the person performs no duties in the classroom and no duties involving contact with pupils, pending withdrawal of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be;

“(b) on becoming aware that a volunteer participant in activities in the school has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors or of any other offence under the Criminal Code (Canada) that, in the opinion of person concerned in the management of the school, indicates that pupils may be at risk, take prompt steps to ensure that the volunteer performs no functions in the classroom and no functions involving contact with pupils, pending withdrawal of the charge,



discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be.”

**The Chair:** This amendment is out of order. Just to further explain my ruling, which refers to section 16 of the Education Act—and we are dealing with section 170 of the Education Act—I previously referred to Beauchesne, Parliamentary Rules and Form. Just for the record, I’ll also refer to another reference, Marleau and Montpetit: “An amendment to a bill must be relevant; that is, it must always relate to the subject matter of the bill or the clause under consideration. For a bill referred to a committee after second reading, an amendment is inadmissible if it amends a statute that is not before the committee.”

**Mr Kennedy:** Again, Mr Chair, I’d like to address that because I would like to seek unanimous consent, but I’d like to put forward the reasons for that. In this particular section, this would simply extend some of the same language. The previous concern I had at the lack of screening and education would apply to people who are in a position of trust in private schools. As currently constituted, without these amendments, Bill 101 takes a complete miss on a whole class of people. Roughly speaking, we’re looking at 50,000 children in Ontario. Half of the children in independent, so-called private schools do not have a certified teacher at the front of the classroom and are not subject to the provisions of Bill 101 in terms of that class of teachers. So it is very important, as we are putting an onus on publicly funded school boards, that we put the onus on those who are responsible for the management and direction of private schools.

Even the ideological inclination that may be shown by some people, and perhaps some people of influence in this party in power, how would that justify not providing the very same protections that the rest of the bill would provide to some students in this province? Because we’re in favour of private schools as a place of education, how then, even at that point, does it follow that you would not make children fully protected in those situations?

Again, to just reference very quickly, the very idea of the bill is that some special protection is required, because beyond the other laws and protections we have in place, children are in a vulnerable position because of the trust and authority relationships that exist in the school setting. I would say this would be true at any time, but it is particularly true because we are now acting under a regime of regulation and law that came with, I believe, Bill 45 or the budget enabling bill from last session, that actually now puts public money into these schools. So these requirements aren’t only ethically desirable, but from a point of responsibility taking, without these requirements we’re actually saying that public funds will be dispersed into jurisdictions and into the classrooms where basic elemental protections—I think the support that Bill 101 has to the extent that it addresses these concerns is based on the elemental concern that children be free from abuse. How can children be free from abuse if we’re going to say they enter into certain

classrooms and they don’t get these protections? This is one part of the enabling language of the bill, to be able to provide for children in those private schools.

**1640**

I would really enjoin the members opposite to provide some support for this. In fact, I don’t see it as challenging any other priority directions this government has in favour of private schools over public schools. That’s beside the point. The point here is that children’s safety should be paramount in whatever school setting they’re in. We are, because of the government’s actions to put public money into private schools, actually in a position to have direct influence.

I’m sure that government drafters could come up with even more compelling ways in which we could exact that minimal standard from the very many private classrooms across the province where children are at risk. I say children are at risk not to denigrate any of the efforts being made in those school settings, but simply because the premise of Bill 101, the premise of the Robins report, is that children are at risk. But there’s an incomplete legislative framework here to provide the very best protection we can. I think we don’t have any illusions that the laws we pass are going to be the basis for a better risk, but that somewhere along the way, in the prevention and education programs, for example, that Robins has asked for, and a range of other things, we will be making children safer. But it is wholly and largely inconsistent to me that we would not then, if we accept that logic, if that’s the premise of the bill, if that’s what we’re being asked to support, make sure that every school child in the province has the same protection. For that reason, I would ask for the members’ support for consideration of this particular amendment.

**Mr Marchese:** Chair, I wanted to speak to that.

**The Chair:** To Liberal motion 3?

**Mr Marchese:** That’s why I had my hand up.

**The Chair:** Sure. Please proceed.

**Mr Marchese:** Very briefly, I just want to say to the Conservative members with respect to this—and I’ll have an opportunity to speak on third reading, so I’ll take my time there—that it’s sad. Here we have amendments that help your bill, that help to protect young people, whether they’re in public or private schools. What you’re doing through your legislation is making it impossible for students in a private school who are taught by non-certified teachers to be protected by the law by not being subject to the law. It concerns me that you are not concerned about how it is that you’re going to protect those young people in those private schools. I don’t understand. The purpose of the bill is to protect children from potential abusers, and some people in the teaching profession are not subject to the law. It worries me that it doesn’t worry you. I’m not quite sure how you’re going to deal with that, but by not responding to this amendment in this way or just this debate around this issue and leaving those young people vulnerable, I don’t know how you don’t see that you contradict the very purpose of the bill. I’ll speak to that on third reading.



**The Chair:** Mr Kennedy has requested unanimous consent with respect to Liberal motion 3, which has been ruled out of order. Is there unanimous consent?

**Mr Raminder Gill (Bramalea-Gore-Malton-Springdale):** No.

**The Chair:** I see no unanimous consent.

Our next order of business is an NDP motion to Bill 101.

**Mr Marchese:** I think you all have a copy of that. Gerard, it's right beside you. Just to speak to this, with respect to the submission that Mr Nicholson has made, he raises many good points, but one in particular, and that is that children's aid societies should report their findings respecting abuse of a pupil to the board of education. When they find that there's been some sexual abuse of any kind, it ought to be their duty to report to a board of education those findings so that we can protect young people. It's a reasonable request.

I'm told by the staff of the ministry that we're dealing with a different ministry, and I understand that. It's sad for me, once again, when we're in the business of protecting young people, that the argument made against this is, "This is covered by a different bill. Sorry, we can't cover that in this bill." So we have to wait for the Minister of Community and Social Services to come up with something and to say, "This seems like a reasonable, good idea. We'll pass something and link it to the bill that we just passed here and everything will be OK." My sense is that won't happen. My sense is the minister of Comsoc simply will not do this. We leave ourselves vulnerable. If a children's aid society through their work discovers or uncovers that there is an abuse of any kind, it ought to concern us, and we would want to know as a board of education. But the staff say, "Sorry, it's not part of this bill. It's the jurisdiction of a different ministry. Too bad. There's nothing we can do."

Once again, I don't know if Mr Dunlop is going to comment on this. I hope he does before I move a motion. I would like to hear from him. If he says, "Yes, we're going to rule this out of order," I hope we can get a commitment from Mr Dunlop and the other members that they will raise this issue with the minister of Comsoc and commit themselves to speaking to him to bring in an amendment that addresses at least this part, or anything else, for that matter. That's all I want to say about this before I move my motion for unanimous consent. I hope Mr Dunlop will comment on this, or others.

**Mr Dunlop:** Now or after you read it?

**The Chair:** We would have discussion before the amendment is read.

**Mr Dunlop:** Certainly we'll raise your concerns with Minister Baird and also with the Attorney General, because it impacts both those ministries. But we won't be supporting the draft motion that I have in front of me at this time, unless you've changed it somewhat.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** I've got a couple of comments from some of the presentations that we heard last week. If I recall, Mr Larry Capstick—I can't remember which day he was here last

week—said that the College of Teachers should take the position that we should move forward in small steps. I think Liz Sandals was also quoted as saying, "You can write truckloads of policy, but if you don't change the mindset, then it's just another policy on a shelf."

Basically, you're quite right in voicing some concerns, but you don't really address the real issue. You're playing politics with a couple of words here, I would strongly suggest to you on the other side. I really question the sincerity of your comments in the introduction of this particular amendment, especially at the last minute.

**Mr Kennedy:** On a point of order, Mr Chair: I don't think it's within the standing rules that the motives of members be questioned by another honourable member. I understand that we're in the process of debate, but I believe that is outside of the rules for debate and I would strongly ask for your intervention after that suggestion.

**The Chair:** I didn't hear what Mr Beaubien said, Mr Kennedy.

**Mr Marchese:** It doesn't matter. It's OK. We'll be on the list again.

**The Chair:** Further discussion?

**Mr Michael Bryant (St Paul's):** I've been listening to the able submissions from my colleague Mr Kennedy and hearing from Mr Marchese in seeking unanimous consent. At least Mr Beaubien seemed to be engaging in an intent to explain why this government is taking the position that they're taking. I remember an analogous situation where this committee was considering a bill which required changes to other bills and the involvement of other ministries. It was a bill brought forward by a member of the government caucus, Ms Molinari. We sat around here and we worked very hard to try to get that bill right. I remember Ms McLeod may have saved that bill from demise—and Ms Molinari acknowledged that on the record—by putting forth an amendment that basically permitted it to be carried over to another day. We actually tried to do what committees are supposed to do.

I'm not for a moment suggesting that any particular caucus or party has a monopoly over the truth on any one issue. If the government wants to speak to the issues raised by Mr Kennedy and Mr Marchese and say, "You know what? You're wrong. In fact, here is why we don't want to provide those protections for private school students," and engage in the debate—and we did that. I confess I regret that we are now in a situation where the opposition parties co-operated with the government in order to get that bill passed. Why? Because we thought it was going to do a good thing. We thought it was going to save lives and certainly help protect young people. That's what Mrs Molinari's bill was about. That's the gist of what is before us now.

1650

This government is now, when faced with opposition amendments, unwilling to make those changes. I think it transforms this committee into nothing more than a partisan charade, and committees don't have to operate this way. This committee has not always operated in this



way in the past, and it's operating this way right now. I challenge the members of the government not to hide behind this procedural ruling and to speak to the issue, as we have done before when we helped get one of your member's bills through this committee and passed.

**The Chair:** I thank all three parties for that discussion. I would ask Mr Marchese to make the amendment.

**Mr Marchese:** I was going to comment on something, very briefly. I don't want to spend too much time on this.

**The Chair:** Mr Martin, you wish to speak as well?

**Mr Martin:** Yes.

**Mr Marchese:** Mr Chair, I just wanted to respond to Marcel, because I think his comments were a bit hurtful. He's been here long enough to know when we do things for political reasons. I'm introducing a motion, and it's very brief. Whoever is watching probably would know that one isn't introducing this amendment for political reasons, for God's sake. So I don't understand where he's coming from with that comment.

The children's aid society shall report findings of abuse of a pupil by an employee of a board to the board. What's political about that? I don't get it.

Anyway, when we make changes at the last moment—and some things happen at the last moment—if you find that it's reasonable, it's not a big deal. If you think it'll enhance your bill to protect students, then you say, "OK." I just wanted to say to Marcel that I didn't find his comment very helpful.

**Mr Martin:** I wanted to clarify for Mr Beaubien as well. He was in the House when we spoke to this at second reading, and I thought I heard from him a voice of conciliation and co-operation and working together, because we all agreed we would support it and move it forward. I asked that night when I spoke that we give this due consideration, that there be time for public input and actually that we travel the province with it, because this is a huge issue. He agreed that night that it is a huge issue that touches a lot of communities across this province, not only education systems but all kinds of systems where children are under the supervision of adults in institutions. In fact, it was I who came in here last week and got unanimous consent from the committee to have the children's aid society come forward, because we had missed the boat, so to speak, in not coming forward earlier to have that group present as part of the public consultation last week. You were gracious enough to entertain the gentleman this afternoon, and I thought he made some very important points.

If we were truly interested—and I have to tell you that I am; I've lived this for quite some time. I was a trustee on that school board before I became a member of this Parliament. There's still a lot of pain in that community and a lot of real concern in that community, not only about our community but other communities, that if we don't put in place the kind of things that Mr Nicholson suggests are needed—because he read the Robins report and responded to the Robins report. I picked up his response, and we moved forward a bill before we

prorogued last session, which got lost because of that prorogation. Now we have a bill before us, an opportunity before us to actually do the right thing and make sure we put in place everything we can, as leaders and politicians, to protect children.

I have just one last thing. To suggest that somehow this is political in a negative sense is not true. Certainly it's political. This is a political forum, and we're all politicians. We participate in that wonderful art here. I think it's that art, if it's done properly, that gets us to a point where we have legislation that actually works for people.

I don't know why this amendment, which my colleague puts forward, that references changes to the Education Act such that we can in fact protect children, which is what this act is trying to do, would be found to be out of order. I really don't understand that, and that will have to be explained to me. Maybe my mind's not of a legal nature or a technical enough nature. But to find this out of order—as a layperson trying to do something here today that will protect children in the long haul, particularly back home in my own community, I just don't understand that and would encourage people to perhaps, if necessary, override that ruling by unanimous consent and support this amendment.

**The Chair:** Any further discussion? Mr Marchese, do you wish to make a motion?

**Mr Marchese:** Shall I move it first?

**The Chair:** Discussion before he makes his motion?

**Mr Kennedy:** Very quickly, I just want to suggest that I appreciate both the spirit and the content of this proposed amendment. I think we heard a very compelling argument being made—at the last minute, I understand, but certainly I don't think that process problem should be placed at the feet of either the person who made the argument or Mr Marchese. I really do think it's incumbent on us—and I asked the question very bluntly of the gentleman from the Children's Aid Society of Algoma, where everyone is aware, and Mr Martin has reminded us, these problems arose. I don't think we're doing justice in this amendment, but at least we could start to pay attention to this by giving this amendment consideration, and I would support it for that reason.

**The Chair:** Further discussion? Mr Marchese.

**Mr Marchese:** I move that the bill be amended by adding the following section:

"0.1.3 The Education Act be amended by adding the following section:

"Reports by CAS

"57.1.1(1) A children's aid society shall report findings respecting abuse of a pupil by an employee of a board to the board.

"Same

"(2) Boards shall be duly diligent in monitoring and investigating reports received under subsection (1)."

**The Chair:** The amendment is out of order. It refers to section 57 of the Education Act, not subsection 170 of the Education Act, and the reasons for the ruling are found in both Beauchesne and Marleau and Montpetit.



Are you now requesting unanimous consent?

**Mr Marchese:** Unanimous consent to submit this motion.

**The Chair:** Do we have unanimous consent to accept this amendment, which has been declared out of order? I do not see unanimous consent.

The next motion before us would be Liberal motion number 4.

**Mr Kennedy:** This is perhaps the most important amendment, in the sense that it suggests in some detail—and I want to commend legislative counsel for their hard work in coming up with what is quite a serious amendment. I think you'll understand and appreciate as you read through this particular amendment that it is about trying to give a reasonable, workable framework for how persons in charge of classrooms around this province who are not certified teachers, and therefore not currently subject to the authority of the College of Teachers, could also be subject to the very same intent—no different intent—as the one that the government bill has put forward.

In large measure, this is helping to complete the government bill. In terms of its necessity—the committee's time is valuable—in approximately 2,000 classrooms in private schools and approximately 2,000 classrooms, and likely considerably more, in public schools, at the front of the class are—and the minister and the parliamentary assistant will know; they give out the letters of permission—unqualified teachers, teachers who are not members of the college, who have not gone through the rigorous training that teachers have in this province and therefore are teaching in the very same trust position; in fact, sent there with the minister's consent. As well, there are people on so-called short-term assignments, put there by boards, and they number in the hundreds. Primarily this is a framework to get at, in a normalized situation, teachers who are uncertified.

1700

I remind the public and members of the committee—I think they are probably aware—that currently there is no requirement to be certified if you teach in a private school, and there are these other circumstances as well. So roughly 4,000 classrooms in this province, and probably more, are affected by this amendment. This amendment sets up a parallel structure to at least have some oversight, the very same oversight that the government would argue we have to have, and the very same oversight that Bill 101 brings before this House. It offers instead some substitution for the College of Teachers, with some power on the part of the minister to act on at least a certain kind of basis to investigate charges and allegations and provide not just protection but also some level of due process so that the people who may be subject to these various allegations are also subject to some protection.

I would say that without this we have the Wild West out there in terms of certain classrooms in this province. Why should there be some classrooms that have to have the protection of Bill 101 and others that shouldn't? How

does that work? What's wrong with those kids? How are those kids any different from the kids who are, in the case of a publicly funded school, right next door, or in the case of a private school, down the street? How is it different? How does it make any sense not to include those kids?

This amendment, in some detail, mimics or parallels the provisions we already have in front of us in the main body of the government bill, Bill 101. I would say with very much humility that this is not about changing what the government wants to do. This is about completing what the government has told the province of Ontario its root concerns are. I'd be very happy to learn of one, but I can see no other way to look at this. If the member opposite also wishes to describe this as political—this is the result of some fairly reasonable work and doesn't change any other policy options of the government. In fact, it doesn't get in the way whatsoever. You are the government. You've made certain choices. We may disagree with them, but certainly at a root level, when it comes to the protection of children, this doesn't have to get in the way.

I would say that here you have a framework that doesn't preclude anything else you're doing in terms of putting money into private schools and all those other things with which we vehemently disagree. It simply says that those children count just as much when it comes to something of this elemental nature, which is the legislative protection they should have. I think it is hard for most people to appreciate why we wouldn't do this. Again I would draw attention particularly to the fact that there are classes of pupils in both public and private systems around the province that would be exempted from the efforts that Bill 101 makes without an amendment of this type.

**Mr Marchese:** I agree with Mr Kennedy, and I will debate that issue on third reading in the Legislative Assembly.

**Mr Dunlop:** I have some comments that I'd like to read into Hansard on this motion. First of all, the bill we have in front of us, Bill 101, focuses on responding to Robins's recommendations related to the Ontario College of Teachers. The Ontario College of Teachers cannot regulate the conduct of non-members. Uncertified teachers who are employed as temporary teachers by school boards are covered by the proposed amendment to section 12 of the Education Act. Changing the college's mandate to include regulation of uncertified teachers would require amendments to the Ontario College of Teachers Act that are beyond the scope of this bill.

The reporting requirements of the Criminal Code and the Child and Family Services Act already cover all employers and employees. The bill was intended to be respectful of labour relations, and this amendment would interfere with labour relations.

I would also like to point out to this committee that this bill was designed to address a very specific need; that is, the powers of the Ontario College of Teachers. Other measures have been and will be addressed by other



pieces of legislation by the ministry and by others. I would just like to make those comments and have them in Hansard.

**Mr Kennedy:** I wonder if I could say very briefly in response that Justice Robins asked the government to deal with independent schools. So I guess I would put back to the parliamentary assistant: is there a plan on the government's part to address private schools and, as well, to address unregulated teachers in public schools? Is that going to be forthcoming? Is that something we can expect in a different form, and would that be part of the rationale for not entertaining this at this time?

**Mr Dunlop:** The government is looking at other ways to address the problem Mr Kennedy has pointed out.

**Mr Marchese:** Briefly, because I'll debate later, we're dealing with a bill that is designed to protect students from sexual abuse or sexual predators. You agree with that. Those teachers in the private schools who are not certified will not be covered by this legislation. You understand that, I understand that and we agree it's a problem. You're assuring us and whoever is watching that, yes, the College of Teachers does not address the fact that those non-certified teachers—you're agreeing that this bill leaves a big gap in the private school system, because those non-certified teachers are not covered by this law, and so you are worried about that. Your notes seem to indicate that you're concerned too, and you're assuring us that not through this bill—because the College of Teachers only deals with teachers; we understand that. Those other people who are teaching, who could be committing some sexual crime or other and will not be covered in this legislation—you're saying, "Don't worry, they will be covered." You understand that at the moment we're only dealing with this bill and we're worried. You're saying, "We know. We made a mistake. It doesn't cover it. But it will be covered some time by another bill from this minister or some other minister." That's what you're saying.

**Mr Dunlop:** Yes, that's what I'm saying. I'm saying that we consider this bill a stepping stone and that we are looking at measures in other ways to address the problem you brought up today.

**Mr Marchese:** We have brought it up for the last couple of months or weeks.

**The Chair:** Any further discussion from members of the committee?

**Mr Kennedy:** Only just very briefly, and further to the comment made by the parliamentary assistant that this amendment does recognize that the College of Teachers Act would have to be amended, this specifically provides for the minister to act in substitution, not for a so-called amendment to the College of Teachers Act. In other words, this deals with the existing situation. Again, I want to compliment legislative counsel. This is a remedy that would at least allow it in the meantime. If there is some goal of the government, as it provides funding to private schools, to also make them subject to standards and whatever have you—we don't know that that's the will, but this is an in-between measure that

should at least merit discussion and debate. I would hope that direct consideration by this committee wouldn't be precluded. Therefore I move that the bill be amended by adding the following section:

"0.1.3 The Education Act be amended by adding the following section:

"Requirements Respecting Teaching By Uncertified Persons

"Reporting duties: uncertified teachers

"57.3(1) Subsections 43.1(2) and (3) and sections 43.2 and 43.3 of the Ontario College of Teachers Act, 1996 apply, with the specific modifications set out in subsection (2) and such further modifications as may be necessary, where a person or body employs or employed a person who is not a member of the Ontario College of Teachers,

"(a) to teach a person who is 18 years old or less or, in the case of a person who has special needs, 21 years old or less; or

"(b) to provide services, including support services, related to the education of a person who is 18 years old or less or, in the case of a person who has special needs, 21 years old or less.

"Same

"(2) The following are the specific modifications referred to in subsection (1):

"1. The reference in subsection 43.1(2) of the Ontario College of Teachers Act, 1996 to 'the purposes of subsection (1)' shall be read as a reference to the purposes of subsection (1) of this section.

"2. The reference in subsection 43.1(3) of the Ontario College of Teachers Act, 1996 to 'this Part' shall be read as a reference to this section.

"3. The references in section 43.2 and 43.3 of the Ontario College of Teachers Act, 1996 to a 'member' shall be read as references to a person who is not a member of the Ontario College of Teachers.

1710

"4. The references in sections 43.2 and 43.3 of the Ontario College of Teachers Act, 1996 to the 'Registrar' and to the 'College' shall be read as references to the minister.

"5. The references in sections 43.2 to 'professional misconduct' shall be read as references to conduct that would cause a reasonably diligent employer to conclude that pupils may be at risk.

"Regulations

"(3) The Lieutenant Governor in Council may make regulations,

"(a) governing the duties of the minister following receipt of a report under this section, including but not limited to regulations requiring the minister to cause an investigation to be made into the conduct of a person in respect of whom a report is made under subsection (1);

"(b) providing for procedural guidelines and rules to be followed in an investigation under clause (a);

"(c) authorizing the person carrying out the investigation to adopt procedures for the investigation consistent

with any guidelines or rules provided for under clause (b);

“(d) specifying findings or classes of findings that may be made at the conclusion of an investigation under clause (a);

“(e) setting out the consequences of various findings or classes of findings made under clause (d);

“(f) providing for appeals and reviews in relation to findings and consequences of findings, including but not limited to providing for procedures and remedies;

“(g) authorizing the minister to maintain records of findings made under clause (d);

“(h) requiring the minister to provide information specified in the regulations to a person or body who employs or employed the person in respect of whom a report is made under subsection (1).

“Same

“(4) Without limiting the generality of clause (3)(e), a regulation under that clause may,

“(a) prohibit the person in respect of whom the report is made under clause (3)(a) from performing functions referred to in clause (1)(a) or (b);

“(b) provide for limitations or restrictions respecting the performance of functions referred to in clause (1)(a) or (b) by the person in respect of whom the report is made under clause (3)(a).

“Same

“(5) Any person or body that is contemplating employing a person who is not a member of the Ontario College of Teachers to perform functions referred to in clause (1)(a) or (b) shall, before entering into an employment agreement, make a written inquiry to the minister to determine whether there is a prohibition, limitation or restriction under subsection (4) that relates to the prospective employee.

“Same

“(6) The minister shall respond in writing as soon as is practicable to an inquiry made under subsection (5).

“Prohibition

“(7) No person or body shall employ a person who is not a member of the Ontario College of Teachers to perform functions referred to in clause (1)(a) or (b) before receiving a written response under subsection (6).

“Prohibition

“(8) No person or body shall employ a person who is not a member of the Ontario College of Teachers to perform functions referred to in clause (1)(a) or (b) contrary to a prohibition, limitation or restriction under subsection (4).

“Offence

“(9) Every employer who contravenes a reporting requirement under subsection (1) or who contravenes subsection (7) or (8) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

“Delegation

“(10) In addition to his or her powers of delegation under subsection 2(4), the minister may in writing delegate any of his or her powers or duties under this section to an official or committee of the Ontario College

of Teachers subject to such limitations as the minister specifies.”

**The Chair:** Thank you, Mr Kennedy. That amendment is out of order. It refers to section 57.3 of the Education Act, not section 170 of the Education Act. It's out of order for the reasons I have described to the committee.

**Mr Kennedy:** Mr Chair, I seek from the committee unanimous consent for this motion to be considered.

**The Chair:** We have a request for unanimous consent. This is Liberal motion number 4, which has been declared out of order. Do we have unanimous consent? We do not have unanimous consent.

We now go to section 1. We will consider Liberal motion number 5.

**Mr Kennedy:** I'm not seeking unanimous consent. This is, I understand, in order. The reasoning here is simply again the effort to do as much justice by Justice Robins as we can. This is providing for a corollary requirement that if there is a finding that pupils could be at risk, there are no duties in the classroom, not just by the teacher or temporary teacher or staff members but also by volunteers. It also provides that if volunteers have been charged or convicted, they will be subject to similar strictures.

So this provides an amendment that would allow for convictions of volunteers and charges and convictions of other employees also to be subject to some of the provisions of the bill.

**The Chair:** Discussion?

**Mr Marchese:** No. I support the motion and wonder whether the Tories have any prepared statement in opposition.

**The Chair:** I wonder whether we should actually have the motion before us and then discuss that. Do you wish to make the motion?

**Mr Marchese:** Once he reads it, isn't it on the record as a motion? You've already read it for the record, right?

**Mr Kennedy:** No. That was an earlier motion. This is a new one. I haven't done that yet.

**The Chair:** We have not heard the motion yet.

**Mr Kennedy:** I move that paragraph 12.1 of subsection 170(1) of the Education Act, as set out in section 1 of the bill, be struck out and the following substituted:

“duties - charges, convictions of employee

“12.1 on becoming aware that a teacher, a temporary teacher or any other person, including but not limited to an educational assistant, custodian, clerical worker, technician, psychologist or tester, who is employed by the board has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors or of any other offence under the Criminal Code (Canada) that in the opinion of the board indicates that pupils may be at risk, take prompt steps to ensure that the teacher, temporary teacher or staff member performs no duties in the classroom and no duties involving contact with pupils, pending withdrawal



of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be;

“duties - charges, convictions of volunteer

“12.2 on becoming aware that a volunteer participant in activities in a school governed by the board has been charged with or convicted of an offence under the Criminal Code (Canada) involving sexual conduct and minors or of any other offence under the Criminal Code (Canada) that in the opinion of the board indicates that pupils may be at risk, take prompt steps to ensure that the volunteer performs no functions in the classroom and no functions involving contact with pupils, pending withdrawal of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be;”

**The Chair:** Thank you, Mr Kennedy. Is there any discussion on that motion?

**Mr Kennedy:** Just a little bit further, I think the members are all imbued with the significance of this, which is that there are other people who hold those positions of responsibility. We have an opportunity with Bill 101 to put them on the same footing, I would say, in some ways, because teachers already have the regulation of the college and a fair bit of oversight into their actions and activities. This would be a very important addition to the bill to ensure that these other classes of people have the same strictures, but also the same validation which comes from saying that there is a process in place. Parents and other people who would normally have concerns for children in school would know there is a requirement that makes sense.

We would hope that boards are following this requirement on their own but, since this is all about giving some overall legislative direction, that that would include, if not a comprehensive—because we already heard earlier in this process parts which the government is not willing to entertain—a simple extension of the bill to include these classes of people.

**The Chair:** Any further discussion?

**Mr Dunlop:** I just wanted to point out or read a couple of comments. One is that through the passage of the Safe Schools Act, the government has already demonstrated its commitment to ensure a safe learning environment for our students.

The government intends to deal with provisions for staff other than teachers through the criminal reference check regulations.

**Mr Kennedy:** I want to say, for all the members opposite, that I'm sure their interest is just as sincere as ours, but I can't understand, if the approximately 600 pages of the Robins report are to really make sense, why we don't use this opportunity. We're dealing with a report that is over a year and a half old. We apprehend that in a very small number of situations, but enough that we should be concerned with the main bill in front of us, that there is more than criminal reporting that has to be dealt with, substantially more.

Over and over again, Justice Robins reminds us that dealing with it after the fact—we were told this morning,

and we were told by almost every presenter, that if you deal only with criminal reporting, you're dealing with a minority, a small minority, of situations that could cause harm to students. Instead we have to also—and this part doesn't do all the expansion that is possible, but it does deal with at least a level playing field, which would say that other classes of employees are subject to the same kind of strictures we put on registered teachers, who are the main thrust of the measures in this bill.

So again I would hope the government members, and all members of this committee, would support this bill in the spirit in which it is intended: to help complete the bill and help provide better protection for students whom we wish would never have to avail themselves of the measures that come out of it but who may find themselves in a situation of exploitation unless we do this.

1720

**The Chair:** Thank you, Mr Kennedy.

Committee, we have before us Liberal motion amendment number 5, an amendment to section 1.

Are members of the committee ready to vote?

**Mr Dunlop:** Sure.

**The Chair:** All in favour? Those opposed?

**Mr Bryant:** A recorded vote.

**Mr Marchese:** We have a tie.

**The Chair:** As Chair, I also vote no.

I declare that amendment lost.

If you wish a recorded vote, you would ask for that when I raise the question, “Are the members ready to vote?”

Continuing with section 1, shall section 1 carry? Carried. I declare section 1 carried.

With respect to section 2, shall section 2 carry? Carried.

With respect to section 3, shall section 3 carry? Carried.

With respect to section 4, we have a government motion before us.

**Mr Dunlop:** I move that section 43.2 of the Ontario College of Teachers Act, 1996, as set out in section 4 of the bill, be amended by adding the following subsections:

“Same

“(2.1) If a member resigns while his or her employer is engaged in an investigation into allegations of an act or omission by the member that would, if proven, have caused the employer to terminate the member's employment or to impose restrictions on the member's duties for reasons of professional misconduct, the employer shall file with the registrar within 30 days after the resignation a written report stating the nature of the allegations being investigated.”

**The Chair:** Are the committee members ready to vote?

**Mr Marchese:** Yes, we're ready.

**The Chair:** All in favour? Opposed?

I declare this amendment carried.

We have another government motion.

**Mr Dunlop:** There are two more technical motions, Mr Chair.

**The Chair:** Under section 4?

**Mr Dunlop:** Yes.

**Mr Kennedy:** Mr Chair, I wonder if we could ask the parliamentary assistant to explain the need for the technical motions before they're put, if that wouldn't be too onerous.

**Mr Dunlop:** When the amendment is put in place on motion number 6, it changes the alignment of the sections in the bill.

**Mr Kennedy:** So both of them are just motions that will make it conform?

**Mr Dunlop:** Yes.

**Mr Kennedy:** OK.

**The Chair:** Thank you, Mr Kennedy. Thank you, Mr Dunlop.

Do you wish to read the motion?

**Mr Dunlop:** Thank you very much, Mr Chair.

I move that subsection 43.2(3) of the Ontario College of Teachers Act, 1996, as set out in section 4 of the bill, be amended by striking out "subsection (1) or (2)" and substituting "subsections (1), (2) or (2.1)".

**The Chair:** Are the members ready to vote?

All those in favour? Those opposed? I declare this amendment carried.

We have another amendment to section 4.

**Mr Dunlop:** No, the next one would be in section 6.

**The Chair:** Oh, I'm sorry. All right.

Shall section 4, as amended, carry? Carried.

Section 5: I see no amendments. Shall section 5 carry? Carried.

We turn to section 6.

**Mr Dunlop:** I have an amendment, Mr Chair.

I move that section 48.1 of the Ontario College of Teachers Act, 1996, as set out in section 6 of the bill, be amended by striking out "subsection 43.2(1) or (2)" and substituting "subsection 43.2(1), (2) or (2.1)".

**The Chair:** Are the members ready to vote?

Shall this amendment carry? Those opposed? I declare this amendment carried.

Shall section 6, as amended, carry? Carried.

Section 7: no amendments. Shall section 7 carry? Carried.

Shall section 8 carry? Carried.

Shall section 9, the short title, carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 101, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? I will so do.

That concludes the two orders of business for today. We're adjourned.

*The committee adjourned at 1728.*









## CONTENTS

Monday 5 November 2001

<b>Student Protection Act, 2001, Bill 101, <i>Mrs Ecker</i> / <b>Loi de 2001 sur la protection des élèves, projet de loi 101, <i>M<sup>me</sup> Ecker</i></b> .....</b>	J-575
Children's Aid Society of Algoma .....	J-575
Mr Hugh Nicholson	

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale PC)

Mr Gerard Kennedy (Parkdale-High Park L)

Mr Rosario Marchese (Trinity-Spadina ND)

#### **Also taking part / Autres participants et participantes**

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mr Tony Martin (Sault Ste Marie ND)

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Ms Marilyn Leitman, legislative counsel

CA2 ON  
XC14  
-577



Permanent  
Publications

J-24

J-24

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 6 November 2001

# Journal des débats (Hansard)

Mardi 6 novembre 2001

## Standing committee on justice and social policy

Prohibiting Profiting  
from Recounting  
Crimes Act, 2001

## Comité permanent de la justice et des affaires sociales

Loi de 2001 interdisant  
les gains tirés  
du récit d'actes criminels

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Tuesday 6 November 2001

Mardi 6 novembre 2001

*The committee met at 1607 in room 151.*PROHIBITING PROFITING  
FROM RECOUNTING CRIMES ACT, 2001LOI DE 2001 INTERDISANT  
LES GAINS TIRÉS  
DU RÉCIT D'ACTES CRIMINELS

Consideration of Bill 69, An Act to protect victims by prohibiting profiting from recounting of crime / Projet de loi 69, Loi visant à protéger les victimes en interdisant les gains tirés du récit d'actes criminels.

**The Chair (Mr Toby Barrett):** Good afternoon, committee.

**Mr Peter Kormos (Niagara Centre):** On a point of order, Chair: It is now 4:07 pm. I understood this committee to commence at 3:30 or as soon as orders of the day were reached in the House, if orders of the day were arrived at subsequent to 3:30. Orders of the day were reached in the House at approximately 4 pm, perhaps 4:01 pm. It is my understanding, Chair, that your obligation is to perform here as a non-partisan player in this committee process and that it is your job to call the meeting to order when it is to come to order. It is not your job to protect the government against a lack of a quorum. That displays and betrays a partisanship which is not becoming of a Chair and, I put to you, is one that we should not expect from any Chair of any political stripe, whether they are from the government caucus, the Liberal caucus or the NDP caucus.

I am suggesting to you, Chair, that you purposely delayed calling this meeting to order. In fact, it was brought to your attention that the meeting should have been called to order and you indicated to me that you were going to wait for a quorum. That, Chair, is not your function. You are paid a substantial amount of money acting as Chair, serving as Chair, to perform this responsibility in an objective and neutral manner. I find your response to me that you were going to use your power as Chair to wait before calling this meeting to order until there was a quorum, which meant until the government had its members here under the circumstances, to be a serious breach of your responsibility to conduct yourself in a neutral manner.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** Mr Kormos pointed out that in the House, orders of the

day were called at approximately 4:01, according to his watch. You called the meeting to order at 4:07, according to his watch. That is six minutes. At my age, I would strongly suggest it probably takes me a minute, a minute and a half, to get from the House to here. So really, from the time the orders of the day were called to the time that this committee was brought to order is six minutes. I don't know what the point is and I don't know what the member from Welland is trying to prove, but I certainly find six minutes, from the time of orders of the day to the time this meeting was brought to order, fairly reasonable.

**Mr Kormos:** Chair, it's not a matter of what Mr Beaubien finds reasonable, and it's not a matter of how capable he is of getting up and down from the chamber; it's a matter of your neutrality. You indicated clearly to me that you were declining to call the meeting to order because there was no quorum. Once again, I put on the record that I find that to be a betrayal of your responsibility to conduct yourself in a neutral and non-partisan manner in this committee. Mr Beaubien should perhaps have some regard to what the appropriate conduct is of Chairs here in this Parliament.

**Mr David Tilson (Dufferin-Peel-Wellington-Grey):** It's on the record. Let's move on.

**The Chair:** My only comment is that I am less inclined to have you put something on the record, speaking on my behalf, from a conversation that was held previously. I've been chairing—

**Mr Kormos:** Are you about to refute what I said you said, which other people heard?

**The Chair:** Can I continue, sir?

**Mr Kormos:** Are you about to refute what you said or deny that you said you were going to wait until there was a quorum? Are you denying that? If you deny that, you will be lying.

**Mr Tilson:** On a point of order, Mr Chairman: It is completely out of order for Mr Kormos to get into a debate with the Chair. You can listen to his point of order and you can rule on that point of order—

**Mr Kormos:** It's entirely out of order for the Chair to conduct himself in a partisan manner.

**Mr Tilson:** It is completely out of order for Mr Kormos to debate with you. I would suggest that Mr Kormos has made his point. Let's move on and start debating this bill.

**The Chair:** That's not a point of order, Mr Kormos. I won't comment on this any further.



We meet this afternoon as the standing committee on justice and social policy for today, November 6, 2001. Our agenda is Bill 69, An Act to protect victims by prohibiting profiting from recounting of crime. Our order of business is clause-by-clause consideration of the bill. I will put the question, are there any comments or questions or amendments to Bill 69, and if so, to which section or sections?

**Mr Kormos:** On a point of order, Chair: That's not how it's done. You call one clause at a time. You don't say, "Has anybody got an amendment to any clause in the bill?" You call section 1 and then you ask if there's any debate on that and/or any amendments. You don't do an omnibus call for any amendments that anybody may have to any clause. Please.

**The Chair:** That's not a point of order, Mr Kormos. I am asking for amendments to any section of the bill. Seeing no amendments to any sections of the bill—

**Mr Kormos:** On a point of order, Chair: An amendment to a section is made when that section is called.

**The Chair:** If we have an amendment, we could continue. I'll start with the Liberal Party. Are there any amendments or comments or questions or discussion to any sections of this bill?

**Mr Michael Bryant (St Paul's):** Mr Chair, maybe I could suggest that we use general comments and questions in discussion on section 1, which I believe is the way we ordinarily would proceed. In other words, we'll make general comments and questions once we turn to each provision. Or are you suggesting that we undertake a different procedure? I'm not clear exactly what you're asking us. This isn't general—

**The Chair:** I have put the question, are there any comments or questions or amendments to any section? Please identify which section or sections you wish to comment on, because this is open. Pick a section if you wish to comment.

**Mr Kormos:** Is that how we're supposed to run it?

**Mr Bryant:** No. I'm trying to be of assistance here, Mr Chair. Should we just turn to section 1?

**The Chair:** Let's start with section 1.

**Mr Kormos:** Praise the Lord.

**Mr Bryant:** I'm going to reserve my comments, by and large, to third reading debate on this bill. I just want to repeat that I believe this bill very much to be a paper tiger. It is unfortunate that this Legislature is spending time cutting and pasting Mr Jackson's private member's bill into another bill. While I appreciate that sometimes bills need to be updated, my understanding is that the number of times Mr Jackson's bill has been used through litigation has been few, if ever. In those circumstances, I don't quite know why the taxpayers of Ontario are forking out to put a bill through this Legislature that in fact is, at the end of the day, not going to have any real, substantial impact for victims of crime in Ontario. Obviously, we support the spirit of the bill and the intent of the bill. We supported Mr Jackson's bill, so we'll be supporting this bill. I guess my question is, of all the things we could be doing for victims of crime today, why

is it that we're spending time on this bill, which has not been used by victims in the past and, I would suggest, is not going to be of much assistance to victims in the future? That's all I have to say.

**The Chair:** We'll now go to the NDP.

**Mr Kormos:** You have people here at the table, I trust, who are here for our assistance. I wonder if we could find out who they are.

**Mr Tilson:** If there are any technical questions or questions that I can't answer, there are members from the Attorney General's office here who will attempt to answer any questions that any members of the committee may have.

**Mr Kormos:** I think they should be able to tell us who they are and what they do at the Ministry of the Attorney General.

**Mr Tilson:** Sure, that's fair.

**The Chair:** Could we ask you to identify yourselves, please?

**Ms Lois Lowenberger:** I'm Lois Lowenberger. I'm counsel with the Ministry of the Attorney General, court services division.

**Mr Mohan Sharma:** I'm Mohan Sharma, counsel, court services division, Ministry of the Attorney General.

**Mr Kormos:** I do have some questions. First, referring to the Victims' Right to Proceeds of Crime Act, 1994, during the course of the debate around this bill, we made frequent reference to—of course that act is repealed by this bill. Can you tell us whether or not there has ever been any money seized or surrendered as a result of the 1994 legislation?

**Ms Lowenberger:** To our knowledge, the only amount that's outstanding is \$1.07. I've not heard of any other amounts.

**Mr Kormos:** In other words, the amount that's held in the trust?

**Ms Lowenberger:** That is correct, yes.

**Mr Kormos:** Do you know—and I'm dead serious—how it got there?

**Ms Lowenberger:** No, and I don't think I can speak to it, really.

**Mr Tilson:** Obviously, there has been very little, if any, litigation with respect to Mr Jackson's bill—I can't recall the number of it; we'll refer to it as Mr Jackson's bill. One of the difficulties that we're going to have talking about what I agree is a rather strange amount is something called privacy legislation. There may be an answer, but the difficulty we're going to have is in giving that answer. It probably—not probably; it does contravene the privacy legislation, and I don't think you or I want to do that. But that is the amount that I believe still sits there.

**Mr Kormos:** I am so pleased to see your interest in defending the right to privacy of just plain folks. I'm pleased to see that from the parliamentary assistant.

**Mr Tilson:** Thank you very much, Mr Kormos.

**Mr Kormos:** But I wouldn't have expected anything less from him, knowing him as I do.

**Mr Tilson:** Absolutely.

**Mr Kormos:** But, look, \$1.07, fair enough, but has the Victims' Right to Proceeds of Crime Act, 1994, been used to require the forfeiture or the deposit of monies during the course of its life from 1994 to the present?

**Mr Tilson:** Go ahead. I think the answer to that is no, but perhaps you'd better confirm that.

**Ms Lowenberger:** I don't think I can comment on that, really.

**Mr Tilson:** My understanding with respect to Mr Jackson's bill is that that has to do specifically with civil litigation. The bill that is before us, Bill 69, has to do with the recovery of money, assets or whatever that are being used with respect to the publication of material used by perpetrators involving victims—television, movies, that sort of thing. The Jackson bill did not have that type of focus.

**Mr Kormos:** This is where I need help, because clearly I misunderstand the Jackson bill. I understood that it similarly required the deposit of monies that were received as a result of a contract but required a judgment for a victim to seize money.

**Mr Tilson:** That's true.

**Mr Kormos:** Am I mistaken or am I right?

1620

**Mr Tilson:** I'm going to let the staff pursue that question, but I'm trying to distinguish the difference between the Jackson bill and Bill 69. You go ahead and try to answer Mr Kormos's question.

**Mr Kormos:** But the reason I responded that way to you is because you left the impression that if there had been no civil actions against criminals, there wouldn't be any money deposited in the fund.

**Mr Tilson:** You're returning to the \$1.69 and I've given you the best answer I can. I can't improve on that answer.

**Mr Kormos:** But au contraire, what I want to find out—you see, under the Jackson bill, monies do not necessarily have to be paid out to a victim unless that victim gets a judgment. I understand that. But it does require, similar to this legislation, that monies received or owed as a result of a contract with a de facto criminal—having been proved guilty beyond a reasonable doubt, which Mr Tilson will find interesting in the bill—have to be deposited in this fund. So I'm getting the impression that the Jackson bill has never been invoked to seize or require the deposit of any monies obtained by a criminal for his or her recounting of a crime. I just want to make sure I'm accurate in that regard and that I understand you. Is that correct or not?

**Ms Lowenberger:** The current Victims' Right to Proceeds of Crime Act, subsection 2(3) provides that "A person who is required under a contract to pay money to the accused or convicted person or to a related person shall pay it instead to the Public Guardian and Trustee." And there's a subsequent provision which provides for payment out under certain circumstances.

**Mr Kormos:** What I want to know is, has the Jackson bill ever been invoked, since it received royal assent, to

require the deposit of monies in the manner prescribed in the bill?

**Mr Tilson:** To my knowledge, the answer to that is no.

**Mr Kormos:** I wonder if that's the AG staff's understanding as well.

**Mr Tilson:** We could confirm that.

**Ms Lowenberger:** Yes, it is.

**Mr Kormos:** Thank you. What prompted the bill we're now considering in committee in view of the fact that there hadn't been a single contract with a criminal or that the Jackson bill had never been invoked and tested?

**Mr Tilson:** Mr Chairman, I don't know whether Mr Kormos is directing that question at me. I'll attempt to answer it.

This bill is being used as a deterrent. Notwithstanding what Mr Kormos is trying to bring about, the Jackson bill has not been that productive. We are concerned with respect to victims. We have seen, since the Jackson bill, a number of situations, of cases, of serious crimes against victims. I really don't want to give them the credit of what they are. We all know—

**Mr Kormos:** We agree.

**Mr Tilson:** I'm trying to answer your question.

**Mr Kormos:** No, we agree.

**Mr Tilson:** Absolutely. We acknowledge that. We do not believe that the Jackson bill goes far enough to protect victims. We are not acting as a reaction to these situations; we are trying to prevent the type of situation we have all talked about, that is, perpetrators benefiting from their crimes against victims. So to respond to Mr Kormos's question, this bill is being used as a deterrent to events that have occurred since the Jackson bill was passed.

**Mr Kormos:** How is this bill any more of a deterrent in view of the fact that this bill, in a very similar if not identical manner to the Jackson bill, causes the forfeiture of any monies received in a contract with, let's say, a book publisher and a criminal? How does it provide a greater deterrent?

**Mr Tilson:** We're spending a fair bit of time here on the comparison between Bill 69 and the Victims' Right to Proceeds of Crime Act, which we've been referring to as the Jackson bill. This bill was the first of its kind in Canada, and Ontario is still the only jurisdiction in Canada to have such legislation. Bill 69, the bill that is before the committee, differs from the Victims' Right to Proceeds of Crime Act in a number of aspects.

(1) Victims would no longer be required to obtain a civil judgment before they collect. The Attorney General would commence civil proceedings to forfeit the proceeds of a contract for recounting a crime and the victims would only have to apply for compensation.

(2) Bill 69 would apply to any form of consideration which is received by a criminal or a perpetrator—or an accused person, I might add—such as money, a house, stocks, any type of consideration that could be paid by the publisher of a book, the producer of a film or a



television show. The Victims' Right to Proceeds of Crime Act applies only to money.

(3) Bill 69 would improve enforcement. It provides that there would be a clear court process to apply for and forfeit funds.

(4) It would also impose a personal liability on directors and officers of corporations who have a duty to report the existence of that contract to the government but fail to do so. These mechanisms do not exist under the Jackson bill or the bill known as the Victims' Right to Proceeds of Crime Act.

(5) The Victim's Right to Proceeds of Crime Act applies to accused persons and requires money to be forfeited even though the person has not been convicted. Bill 69 would apply only to the accused persons for the purpose of interim freeze orders. On the final determination of the criminal proceeding, if a person is acquitted, the proceeds would be returned or, if the person is convicted, the Attorney General would then go back to court and apply for a permanent forfeiture order.

(6) The Victims' Right to Proceeds of Crime Act does not define the crimes to which it applies. Bill 69, the bill that is before this committee, defines a designated crime as a serious, violent crime—that is, an indictable offence where the penalty is five years' imprisonment or more—sexual assault and serious property offences. These are crimes for which contracts for recounting crimes will be most likely to be entered into.

This topic did arise in the second reading debate, and I pointed out—I think it was to Ms Martel, who raised this question—that it is most unlikely that someone is going to write a book on shoplifting. I suppose it's possible, but this bill would not apply to that type of offence. It would apply to the serious offences, which is what Bill 69 applies to. Bill 69 does not include those minor types of crimes which, if included, we would argue, constitute an overly broad infringement of the right of expression.

(7) The funds under the Victims' Right to Proceeds of Crime Act are simply held in trust. If any funds remain after civil judgments are satisfied, the balance is returned to the accused or convicted person. Under this bill before the committee, Bill 69, funds would be forfeited to the government, at which point the convicted person would lose any rights to the remaining funds that might exist, and residual funds would be used to assist victims generally.

Those are the main distinctions. It appears that where Mr Kormos is going is trying to distinguish between the Jackson bill and this bill. But the real reason for it is to act as a deterrent. If convicted criminals of these crimes, particularly the most outstanding crimes that we've seen in eons, are going to benefit from those crimes in Ontario, whether it be through books or films, they're not going to get the proceeds. We're going to seize those proceeds and pay them to victims.

1630

**Mr Kormos:** It's interesting that you don't want an overly broad definition of crime in Bill 69 but one was

perfectly acceptable in Bill 30. But that really isn't relevant to this debate, is it, Mr Parliamentary Assistant?

I put this to you: in terms of the distribution of funds, what factors will be used to determine the amount of monies paid out of the fund to a victim?

**Mr Tilson:** My position would be that hopefully this bill will receive third reading and at the appropriate time regulations will be prepared, and those types of questions will be answered in the regulations.

Mr Chairman, are we going to start at section 1 or is this going to be a Q and A by Mr Kormos toward me? Are we going to proceed with section 1 and debate section 1? I'm prepared, at your wish, to answer questions from any member of the committee, but I understood we were here to go through clause-by-clause and not for a debate between Mr Kormos or anyone else and myself. I always like to debate Mr Kormos, but I'm not sure this is the appropriate time. The more appropriate time would be in the House.

**The Chair:** My understanding is that we are discussing section 1. However, there may be comments or questions or amendments to any other sections.

**Mr Tilson:** OK, if that's your wish, Mr Chairman.

**The Chair:** Any further—

**Mr Kormos:** Mr Parliamentary Assistant, please, it isn't a debate. I know you are advocating for this bill. I understand that full well. I'm just curious as to why, and I think this is a good venue in which I can determine that; don't you, Chair? This is the place to do it. As a matter of fact, if you'll refer to my comments in the House on second reading debate, I said we need a chance in committee to ask these questions.

You talk about the need for a civil judgment which would assess the quantum—is that the right word; is that what lawyers use?—of damages of a victim that would—

**Mr Tilson:** No, that isn't what this bill is. You've misinterpreted what the bill is. The bill says that if the Attorney General's office determines that there has been a contract that has been entered into by a publisher, producer or some other person who is going to enter into a contract with a convicted criminal to receive an amount of money, an action would be taken, through the approval of the court, to seize that amount of money. Even as early as before the trial takes place, those monies would be seized and frozen pending trial. That's what it's all about. This has nothing to do with an action for damages by a victim against an accused person or indeed someone who has been convicted of a crime.

**Mr Kormos:** That's interesting, because the bill I have before me, Bill 69, says, "The Minister of Finance may make payments out of the account for the following purposes:

"1. To compensate persons who suffered pecuniary or non-pecuniary losses ... as a result of the crime."

Am I incorrect that this is a scheme to pay out proceeds that are obtained by the fund to victims of crime?

**Mr Tilson:** Well, it is possible. Mr Kormos is being consistent with his position, because this is the exact

position that he and his New Democratic colleagues raised in the House.

**Mr Kormos:** We tried.

**Mr Tilson:** You do your best, Mr Kormos, and I respect that.

The question that was raised was, why is the word "may" there as opposed to—I don't know which section that is. Could someone help me?

**Mr Kormos:** Section 9.

**Mr Tilson:** The New Democratic caucus spent a considerable amount of time in second reading on this issue. For example, it may be that a convicted criminal or accused could write a book, if I could create a hypothetical situation, and the consideration could be, say—I don't know—\$50,000. The damages that could be sustained by the victim, which could be approved by a court of law; it could be not approved by a court of law. The victim doesn't necessarily have to go to court to establish the damages or the injuries they've sustained, whether it's pain and suffering, psychological, physical, whatever. The amount that could be received by that victim could be less than \$50,000, it could be more than \$50,000, depending on what amount is in the fund. There is no hard-and-fast rule that the full amount seized from the proceeds under this contract is going to be paid to the victim. It may be all of the amount, it may be less than the amount, it may be more than the amount.

**Mr Kormos:** Who will determine the amount?

**Mr Tilson:** That too will be set forth by the regulations. I'm going to ask the staff to help me on this. The criminal compensation board?

**Mr Sharma:** Criminal Injuries Compensation Board.

**Mr Tilson:** Criminal Injuries Compensation Board.

**Ms Lowenberger:** Or similar entity.

**Mr Sharma:** Set out in—

**Mr Tilson:** I should let them finish.

**Mr Sharma:** It's set out in clause 13(1)(d).

**Mr Tilson:** This question would be answered in the regulations. The regulations haven't been presented yet, but the solicitors from the Attorney General's office have given an example as to whom they expect will be making that determination, but it may be some other group.

**Mr Kormos:** Let me ask the parliamentary assistant, doesn't subclause 13(1)(d)(ii) cause you some great concern?

**Mr Tilson:** Subclause 13(1)(d)(i)?

**Mr Kormos:** No, 13(1)(d)(ii).

**Mr Tilson:** OK.

**Mr Kormos:** Very disturbing.

**Mr Tilson:** I'm going to defer to the staff.

**Mr Kormos:** Yes, perhaps the staff should make sure—so I don't misinterpret it, because I don't want to do that.

**Mr Tilson:** We wouldn't want that, Mr Kormos.

**Mr Kormos:** Maybe the staff should tell me what that little paragraph there means in terms of the capacity to regulate.

**Ms Lowenberger:** I'm sorry. Subclause 13(1)(d)(ii)?

**Mr Kormos:** Yes.

**Ms Lowenberger:** That simply relates to the process for appealing or not appealing a decision to grant benefits under subclause 13(1)(d)(i).

**Mr Kormos:** Maybe I'm misreading it, but it seems to say that the bill permits the enactment of a regulation that would forbid any appeal of a decision made or any judicial review of a decision made as to the amount to be paid out to a victim. Am I misinterpreting that?

**Mr Guzzo:** Unless it's patently unreasonable.

**Mr Kormos:** I don't know whether I'm misinterpreting it. If it denies an appeal, it denies an appeal. I don't know. Am I incorrect?

**Ms Lowenberger:** No, I believe that would be correct, subject to whatever was in the regulations.

**Mr Kormos:** I hope we're clear now. The paragraph I've referred to, 13(1)(d)(ii), permits a regulation that denies any right of appeal to a person or a claimant seeking compensation from the fund. Am I correct? We're in agreement in that regard?

**Ms Lowenberger:** I believe that's right, as I say, subject to whatever the regulations may provide.

**Mr Kormos:** Does that not bother you at all, Parliamentary Assistant?

1640

**Mr Tilson:** Mr Guzzo, I believe, has given a pretty good answer to that. The final half-dozen words in clause (d) state, "unless the decision is patently unreasonable." I don't know how you can get any better than that.

**Mr Kormos:** Mr Tilson, you would force a claimant to reach that high a hurdle in the course of an appeal when similar rights to appeal in so many other venues aren't denied them?

**Mr Tilson:** I don't know how we can add to the answers we've already given.

**The Chair:** Any further questions, Mr Kormos?

**Mr Bryant:** To ask that question another way, often the decision of an arbitrator is insulated because he or she is an expert in a particular field, and that's why we don't want those decisions easily overturned by Divisional Court or by an appellant court. I suppose what Mr Kormos is getting at is, what is it about these decisions that would lead to this clause which in essence is insulating it from appeal? In other words, is there some specialty involved in the adjudicators? Is there something about the nature of the issues before the courts that would lead to this kind of provision, which is ordinarily applied, for example, to a labour tribunal to recognize the labour tribunal's expertise there and to defer to that lower court? I think what Mr Kormos is getting at is, why are we deferring to the lower court? I'm sure there's a very good explanation for it. I'm just wondering what it is about this particular matter.

**Mr Tilson:** But we're not in a court. With this fund, we're not in a court. The judgment for the amount that's under the contract has already been received. That's what we're talking about. We're talking about that money. We're not talking about a judgment. You two are talking about a judgment. This is not a judgment. This is an



amount of money that has been received and is in the fund.

**Mr Bryant:** So the decision is not subject to appeal, is not subject to AJR? Is that the idea?

**Mr Tilson:** Maybe I should let the experts respond to that, but it would seem to me that if you have an action against a publisher for the amount that's in the contract, either side could appeal that decision. What you're talking about is after that amount of money has already been received and is in a fund. It may even be in a fund that exceeds the amount that this particular victim is entitled to. It's in a general fund. Please correct me if I'm incorrect.

**Mr Bryant:** Maybe I used the wrong language. What is it about the nature of the decision? We're insulating this from an application for judicial review, in essence. Isn't that what we're doing? Is that right?

**Mr Tilson:** Jump in at this point, Mr Chairman.

**Mr Bryant:** The language is "appeal," "appeal decision."

**Mr Tilson:** Again, we're not talking about a judicial decision. We're talking about an appeal to the fund. Your question is, is that application for the money under that fund appealable? That was Mr Kormos's original question, and I believe that has been answered.

**Mr Bryant:** No, that wasn't my question. This provision to some extent insulates a decision—I'm using the word from the statute, decision—and it insulates it from—and my question is—from an appeal. Again, this is the word in the provision. I take it that when we're talking about an appeal of a decision, we're not talking about an appeal to cabinet.

**Mr Tilson:** We're talking about an application that has been made by a victim to the fund.

**Mr Bryant:** I understand that.

**Mr Tilson:** That's what we're talking about. Your question is, when whatever body is chosen—and we have given an example of who will probably hear it, but it may be some other group—makes a decision, is that appealable?

**Mr Bryant:** Right.

**Mr Tilson:** That's your question. I'm reluctant to get into something here which the experts perhaps should be looking at, but it seems to me that question has been—

**Mr Bryant:** You could have fooled me that you're reluctant. I can't even get my question out.

**Mr Tilson:** Fire away again, Mr Bryant.

**Mr Bryant:** OK. Here's my question: are we talking about an application for judicial review of a decision made by whatever body it's going to be? Is that what this is?

**Ms Lowenberger:** That would be the type of decision this provision refers to. It would be subject to the regulation and of course subject to any court interpretations.

**Mr Bryant:** Sure. But the appeal referred to in this provision is an application for judicial review of the decision. Is that what the appeal is referring to?

**Ms Lowenberger:** That would be correct, yes.

**Mr Bryant:** I have one more question. I'm sorry if you have already answered this; I didn't quite understand. The fund in which the \$1.07 is sitting, what is that fund?

**Ms Lowenberger:** That is the fund created under the Victims' Right to Proceeds of Crime Act.

**Mr Bryant:** Again, I'm sorry if I missed this. Where does this \$1.07 come from? We don't know, is that right?

**Ms Lowenberger:** I can't comment any further on that, I don't think.

**Mr Bryant:** Let me ask this: can you tell me where that \$1.07 comes from?

**Mr Tilson:** The details of the contract involving the \$1.07 cannot be disclosed, as I indicated to Mr Kormos, because of the freedom of information and protection of privacy legislation. We would be clearly violating the legislation if we commented on that specific case.

**Mr Bryant:** I guess you are the lead officials in the ministry in terms of—actually, the minister is the lead minister and this is the parliamentary assistant. You are the lead officials in the ministry on this bill, I guess. That's why you're here. Is that right?

**Ms Lowenberger:** We're here to provide technical expertise to the committee.

**Mr Bryant:** You worked on this bill?

**Ms Lowenberger:** I don't really know that I could comment on the internal procedures.

**Mr Tilson:** Where are you going, Mr Bryant? We're trying to answer your questions. If you want to ask personal questions, that's unfair.

**Mr Bryant:** Personal questions? No, I'm just trying to ask what the ministry officials—

**Mr Kormos:** On a point of order, Mr Chair: I would admonish and ask Mr Bryant to be careful. Clearly, these people are working for a very heavy-handed government.

**The Chair:** That's not a point of order, sir.

**Mr Kormos:** I'd ask Mr Bryant to lay off of them, because these people are clearly frightened of talking about what's going on in that ministry. I certainly wouldn't want to get them into trouble and I know Mr Bryant wouldn't either.

**Mr Carl DeFaria (Mississauga East):** On a point of order, Mr Chair: This is clause-by-clause. I would appreciate it if we could proceed with section 1.

**Mr Tilson:** We haven't got past the purpose yet, it appears. I tried that and it didn't work.

**The Chair:** Let's continue the rotation. I should offer the PCs time for discussion.

**Mr Kormos:** Yes, let's hear what they have to say.

**The Chair:** We're still on section 1, although we can go to any other section in clause-by-clause.

**Mr Tilson:** I guess I can only speak on the procedure. My concern is trying to determine what the procedure is. So far we've had an interrogation specifically by Mr Kormos and somewhat by Mr Bryant. They are free to ask any questions with respect to the bill, and I gather we're still on the issue of purpose. If they don't have any other questions, perhaps we could vote on section 1.

**Mr Kormos:** Why?

**Mr Tilson:** We did jump from section 1 to a number of other succeeding sections later on in the bill; one was the regulation section, section 13. We seem to have moved from section 1 to the overall bill.

**Mr Bryant:** That's what we wanted to do in the first place.

**Mr Kormos:** Following the Chair's direction.

**Mr Bryant:** We're just following the Chair's direction.

**Mr Kormos:** I'm in the hands of the Chair.

**Mr Tilson:** Indeed. Aren't we all.

**The Chair:** Let's focus on section 1. Is there any further discussion on section 1?

1650

**Mr Kormos:** Thank you very much, Chair. Section 1 deals with the purpose, as Mr Tilson has already made quite clear. It speaks to compensation of persons who suffer pecuniary or non-pecuniary loss. You then inherently involve and call for a consideration of section 9, which provides for the compensation, and down to—and I'm so thankful to Mr Tilson for drawing it to my attention—section 13, the regulation-making power. Because you indicate that it's contemplated that the Criminal Injuries Compensation Board may be—because it would require a regulation to do that—the board considering the applications for compensation, I want to know what standards will be used. I know what standards a victim has available to him or her in a civil action, and so does the victim. It's long-standing law. They similarly have the right to appeal a judgment or an award of damages should they be dissatisfied with that judgment or the award of damages. You purport to deny them that right of appeal in this process. Are you going to subject them to a meat chart? I can't recall you, Mr Tilson, during the insurance wars, but I knew some of your colleagues who were actively involved.

**Mr Tilson:** I remember you during the insurance wars.

**Mr Kormos:** That's right, but I knew some of your colleagues, and they didn't advocate meat charts then for innocent victims. Are you advocating, are you proposing, a meat chart for the disposition of claims to this fund?

**Mr Tilson:** I would think you'd want to stay far away from New Democratic legislation on insurance, which I recall you strongly opposed—

**Mr Kormos:** Yes.

**Mr Tilson:**—and did an admirable job—in fact, were often maintained as the real New Democrat in the Rae government.

However, we're now into An Act to protect victims by prohibiting profiting from recounting of crime, and that is where we are today. The question that was put forward, which I will attempt to answer, is, what criteria will be used in deciding how much a victim is entitled to receive? As I have indicated earlier, there will be regulations prepared to outline what those criteria are. The distribution and the manner of payment would be prescribed by these regulations, and it's expected that the regulations would include reference to such factors as the

nature of the harm caused, any out-of-pocket expenses, the amount of funds forfeited, and there might be other relevant factors.

Those are some of the items that I expect would be dealt with in the regulations, but as you know, we don't have those regulations at this time. That would be developed after the bill, hopefully, would be passed.

**Mr Kormos:** Will the regulations contain a cap?

**Mr Tilson:** I can't say that. To the staff?

**Ms Lowenberger:** I can't comment.

**Mr Tilson:** There you go.

**Mr Kormos:** Chair, I wonder if I could find out what would happen to the victim in the context of this bill, Bill 69, if a victim obtained a judgment for, let's say, \$100,000 against the perpetrator of the crime against them. Would they then be able to use that judgment to attach monies that have been seized from that perpetrator pursuant to this legislation, or that were deposited pursuant to this legislation as a result of the legislation?

**Mr Tilson:** I don't know whether I thoroughly understand the question. I tried to give an example earlier of where the Attorney General, after receiving permission from the court, freezes a certain amount of money that has been entered into in a contract between a publisher of a book, for example, and the criminal or the accused criminal. I gave the example of \$50,000. The victim in another action may sue for any number of things. The victim could apply to the fund. The contractual amount entered into between the publisher and the criminal or the accused—the amount the victim is entitled to could be more than that amount or it could be less than that amount.

Therefore, returning to your question of “shall” versus “may,” that is the rationale as to why the word “may” is used as opposed to the word “shall,” because they might not be entitled to the \$50,000. They might only be entitled to \$25,000. They might even be entitled to \$75,000. You're asking a question, you're calling this a lawsuit, when what it is is an application to the fund.

**Mr Kormos:** I want to really understand this before we deal with this bill in terms of the committee having to consider whether to refer it back. If I am a victim of crime and I initiate—well, let me back up. Where is the provision in this bill similar to the Jackson bill which requires the fund, so to speak, to give notice to the victim that monies have been received? It's perhaps there. Where is it?

**Mr Sharma:** I don't believe there is a section. However, clause 13(1)(d) sets out that regulations may govern procedures for payments out of the account.

**Mr Kormos:** But you agree with me that the Jackson bill, the 1994 legislation, has a provision for—

**Mr Tilson:** Mr Chairman, on a point of order: I wonder if I can ask questions to Mr Kormos's staff?

**Mr Kormos:** Yes, by all means. Allie Vered, our House leader's staff person—I mean, there's one of her and there are eight Liberal staffers behind the speaker's chair.



**Mr Tilson:** They are going to have to get elected to sit where you are.

**Mr Kormos:** You may have your chance in due course.

Am I correct that the 1994 legislation puts a requirement on the fund, a provision for notifying victims when monies have been obtained, seized, received?

**Mr Sharma:** Yes.

**Mr Kormos:** Where is a similar provision in this bill that notifies a victim that monies have been obtained, forfeited, received, seized from the perpetrator of their crime? Do you understand what I'm saying? If it's there, just tell me so I can move on and be comfortable.

**Mr Tilson:** Mr Chairman, I'll try to continue on with the area Mr Kormos is getting into, the criteria. This money received is part of a fund. It's not part of a judgment; it's put in as a fund. The forfeiture of money or assets—it could be assets, it could be anything, as I indicated earlier—would be made available to all victims. There may be more than one victim; there may be several victims. Life isn't as simple as the New Democratic caucus says. Life sometimes gets complicated. There may be victims who have already obtained civil judgment. There may be victims who have chosen not to bring an action for judgment. There could be a multitude of victims, and the distribution to victims—I think that's where you're going: the percentage that might be awarded to victims. There could be different classifications of victims: victims who have proceeded in court, victims who are in court, victims who have already got judgment. That distribution would be based on criteria by regulation.

**Mr Kormos:** I'm looking at section 9 again, and subsection (3), paragraph 1, clearly talks about taking specific monies and using those monies to compensate the victims of the crimes to which those monies are attached. "If money is deposited in an account ... in respect of a designated crime ... may make payments out of the account ... to compensate persons who suffered" as a result of the crime, as distinct from paragraph 2, which speaks to the more general "to assist victims of crime."

I'm glad you raised this, because it still doesn't get to the notice section. Is this intended for specific victims to be able to access specific monies, or am I merely misreading that? Perhaps the staff could assist us in that regard.

1700

**Mr Tilson:** I'd like to try first, if I could. Mr Kormos may not like my answer, and he can ask the staff.

**Mr Bryant:** He can appeal your answer.

**Mr Tilson:** That's right. He could appeal my answer.

**Mr Kormos:** Then I have to watch your staff and their body language, and that's uncomfortable.

**Mr Tilson:** I again repeat that there may be a multitude of victims, and one victim may or may not be entitled to the entire pot. They may be entitled to more than the entire pot, the money in this fund. We're talking about a fund now; we're not talking about the proceeds of a judgment.

**Mr Kormos:** But you see, under the Jackson bill, 1994, a victim was notified when monies were received in the fund. We know there's \$1.07 in the Jackson fund now.

**Mr Tilson:** It obviously didn't work very well, did it?

**Mr Kormos:** We know there's \$1.07 in the Jackson fund now. It isn't related to a criminal or a perpetrator, because we've also effectively been told that, but had it been, we know that a victim would have been advised. The government and its parliamentary assistant appear to rely upon freedom of information—fair enough—but then acknowledge that there are no provisions in Bill 69 to notify any victims that there's money in the fund. So what is going on here? How do victims access this fund if they're not going to be told whether or not there's any money in the fund, never mind any money coming from the perpetrator of the crime against them?

**The Chair:** Mr Bryant?

**Mr Bryant:** Let's get an answer, and then I have a question.

**Mr Tilson:** I don't think I can improve on the question Mr Kormos has asked any more than I have. He can keep asking the question and we can continue to keep giving an answer which he obviously doesn't like. I don't know how I can add to it any further, unless the staff have some more information they'd like to give.

**The Chair:** Mr Bryant, you have a quick comment?

**Mr Bryant:** The parliamentary assistant said of the Jackson bill just now, "It obviously didn't work," in reference to the fact that there's only \$1.07 in the account. Can I ask, did the ministry consult with Mr Jackson at all before proceeding with this bill, directly about his bill and about this bill?

**Mr Tilson:** I don't know that. You'll have to answer that.

**Ms Lowenberger:** I don't think we can comment on that. I'm sorry.

**Mr Bryant:** Perhaps I could ask the question in another way. Can you confirm whether you consulted with Mr Jackson at all?

**Mr Tilson:** Did I personally consult—

**Mr Bryant:** Did the ministry? You're speaking for the ministry.

**Mr Tilson:** Indeed.

**Mr Bryant:** Can you confirm that in fact the ministry did not consult with Mr Jackson?

**Mr Tilson:** We can ask him. I don't think that issue is going to make or break section 1, but I'll ask him.

**Mr Bryant:** No, no. I'm asking: you cannot tell me now—

**Mr Tilson:** Both the staff and I have given both you and Mr Kormos the answer that we don't have any further information at this time. If you want me to say I'm going to ask him, sure I'll ask him.

**Mr Bryant:** No. I meant, did you consult him before you drafted the bill, and what you're telling me is that you can't confirm that you did not.

**Mr Tilson:** At this point I can't, Mr Bryant, no.

**Mr Bryant:** You did not.

**Mr Tilson:** No, I didn't say I did not. I said that at this point I can't answer that question.

**The Chair:** Any further discussion?

**Mr Kormos:** Mr Chair, please, unless Mr Bryant has more.

**Mr Bryant:** No.

**Mr Kormos:** Look, this is important.

**Mr Tilson:** Mr Chairman, I have just received a note from our staff that Mr Jackson was consulted. I can't give any details on what that consultation was.

**The Chair:** Further discussion on section 1?

**Mr Kormos:** I want to understand very clearly. I really have to know this. If Mr Bryant assaults me and beats me to a pulp and I sue him and get a judgment against him—what would that be, assault and battery?—for \$10,000, and he then enters into a book contract to write about how he beat the daylights out of Kormos, and you seize the \$20,000 that the publisher would have paid to him for that book, you then have it in your fund, pursuant to Bill 69. I have a judgment for \$10,000. Can I attach those monies with my judgment, or does that judgment become mooted by your seizure of those assets, subjecting them to the pool? This is what I'm trying to find out. Do you understand what I'm saying? I think it's an important distinction, because victims may not like your meat chart that's going to flow under this bill and your discretionary and highly arbitrary method of compensating. Some victims may say, "No, I want a court, a judge, to decide what my damages are worth."

**Mr Tilson:** In your example, a court awarded you \$10,000. The contract was for \$20,000. Is that what your example was, or was it the same?

**Mr Kormos:** The funds seized were \$20,000 from Bryant's publisher. That's where they'd get it from, right?

**Mr Tilson:** Yes.

**Mr Kormos:** The publisher called you up and said, "Mr Tilson, this book about Bryant beating up Kormos is going to be a big seller. We signed a contract for \$20,000—"

**Mr Tilson:** This is like a moot court proceeding here, Mr Chair.

**Mr Kormos:** "We signed a contract for \$20,000, but instead of paying it to Bryant, we're going to pay it into your fund under Bill 69, as we're obligated by law." I'm outside there in the community with a judgment for \$10,000. Can I attach the monies that are deposited in your fund pursuant to this bill?

**Mr Tilson:** Lawyer Kormos is using the legal term of attachment, and I'm going to let our legal representatives talk about that. My belief is that we're talking about a fund, and I guess the question is whether he can attach his judgment.

**Ms Lowenberger:** I'm not sure I can really add anything further than what Mr Tilson has said about the way in which the fund is going to function. Issues like that are probably going to be for the courts to determine.

**Mr DeFaria:** When you're talking about damages, what's "attachment"?

**Mr Kormos:** Oh, Jesus. I'm praying now.

**Mr Tilson:** Well, we want a lesson.

**Mr DeFaria:** We want a lesson, yes.

**Mr Kormos:** A lesson in praying.

Chair, I really need some help on this. The problem is, I'm reading the so-called time allocation of this bill, and this bill doesn't have to be completed today in this committee. There's no requirement that every question be put—

**Mr Tilson:** Yes, you are entitled to hold the bill up, Mr Kormos.

**Mr Kormos:** There's no requirement that every question be put etc.

**Mr Tilson:** Mr Kormos is entitled to hold the bill up.

**Mr Kormos:** In view of the fact that, one, we started late, and in view of the fact that we're not getting very helpful answers to some pretty simple questions, in my view, from the folks here—I'm asking, if a victim utilizes the civil court system to obtain a judgment against a criminal and seeks to have that judgment satisfied by assets that were deposited pursuant to this bill, can those assets be seized as a result of that judgment once the funds or monies have been received by Bill 69 into the Attorney General's fund, or do they become, as I think some lawyers might say, commingled? It's a question.

**Mr Tilson:** I can't add to that. Mr Kormos has asked a legal question as to whether or not he can enforce a judgment against the fund. I think that's what his question is. Maybe he can clarify that. I believe that's what his question is. You're asking whether or not someone can enforce the judgment against the fund.

**Mr Kormos:** Not against the fund. Against those monies in the fund that were the monies—

**Mr Tilson:** They're not the victim's funds to seize. They belong to the state. You're getting into an area of the law, and I don't know whether I'm able to answer that question. It would seem to me that you are now confusing what is in the fund and what the victim is entitled to through a judgment.

**Mr Kormos:** No, I'm not confusing them.

**Mr Tilson:** They're two different things.

**Mr Kormos:** I'm getting the distinct impression that this fund could frustrate my enforcement of my judgment against Mr Bryant if the only assets he had were the funds to be paid to him by the book publisher and those funds were paid into the fund by the book publisher so that they—the book publisher, not Bryant—would comply with the legislation. You're telling me, then, that I'm a victim and I can't have my judgment satisfied after I had a court tell me the beating Bryant gave me was worth \$10,000 in damages?

**Mr Tilson:** I believe you're returning to the area—and I don't know how I can add to it any further—as to what criteria the people who are administering that fund would use with respect to distributing those proceeds. I can't add anything further than to say the manner of payment from the fund would be prescribed by regulation.

1710

**Mr Kormos:** Wow. Do you—

**Mr Bryant:** Mr Chair, just to follow that up, I'll bet the Office for Victims of Crime would have some con-



cerns with that particular result. Could I ask, has the Office for Victims of Crime been consulted on this bill?

**Mr Tilson:** Can you answer that?

**Ms Lowenberger:** I don't think we can comment on that either. Sorry.

**Mr Tilson:** Give me a minute.

The answer to that is yes, Mr Bryant, the Office for Victims of Crime has been consulted. In fact, I have a press release that was put out by the Ministry of the Attorney General on June 5, which you may have in your file—it may even be in these binders we have—where Sharon Rosenfeldt, the chair for the Office for Victims of Crime, stated, “Victims need protection from the unscrupulous efforts of criminals to capitalize on their crimes.... It is encouraging that the government is taking action to ensure victims do not have to relive their pain as a result of the actions of convicted criminals.” So the answer to your question is yes, and the Office for Victims of Crime has fully supported the legislation.

**Mr Bryant:** I think you've answered. Just so I'm clear, I'm wondering—and this is the same with Mr Jackson. I wasn't referring to whether you are willing to talk to him in the future. I was referring to whether he was consulted. I'm just saying—

**Mr Tilson:** I've answered in the affirmative that Mr Jackson was consulted. I've now been advised that Mr Jackson was consulted.

**Mr Bryant:** Right. I just wanted to make sure the office was consulted before the drafting or I guess during the drafting of the bill. Are you able to tell me that? I'm just wondering if they put their minds to this particular issue, which I know would be of concern to victims.

**Mr Tilson:** Give me another minute.

Mr Chairman, I've been advised that the Office for Victims of Crime was indeed consulted before this legislation was introduced. In fact, they review any legislation that involves victims, and they provide advice to the Attorney General's office. That has indeed been done with respect to Bill 69.

**Mr Kormos:** What causes me concern is, are you telling us the Office for Victims of Crime is endorsing or approving a bill that eliminates the rights of the individual victim in deference to the collective? We just came to understand that as an individual victim of the scenario I described of Mr Bryant assaulting me, my right to sue him and have a judgment enforced vis-à-vis proceeds he might obtain from a book publisher or movie producer are then displaced by the book publisher's or movie producer's obligation to submit those monies to the fund contemplated in Bill 69.

**Mr Tilson:** You still have, as a victim, the right to enforce your judgment. You can take whatever action your counsel recommends to you to enforce your judgement.

**Mr Kormos:** But can I go after monies that were deposited, pursuant to Bill 69, by the publisher who negotiated a contract with Mr Bryant about the beating he gave me?

**Mr Tilson:** I don't think we can add any further, Mr Chairman. We've been asked this question at least three times, and we've given the best answer we can give.

**Mr Kormos:** Would you answer it? Can I go after the monies?

**Mr Tilson:** There's the fourth time we've been asked the question.

**The Vice-Chair (Mr Carl DeFaria):** I think the parliamentary assistant has indicated that he has no further answer to your question, Mr Kormos.

**Mr Kormos:** Perhaps he could remind me what his earlier answers were.

**The Vice-Chair:** If I may just have a minute. We have to deal with the bill today.

**Mr Kormos:** No.

**The Vice-Chair:** We have only one day.

**Mr Kormos:** Yes, and there's no provision—

**The Vice-Chair:** So—

**Mr Kormos:** One moment, Chair. You see, there is no provision in the time allocation for the deemed presentation or moving of clauses or the deemed passing of them. The Chair knows that it's standard form when that's done, and in fact it gives until November 22 for a report back. I suspect that the Chair finds itself in a very difficult position, because were this bill necessarily to be completed today, the motion before you would have the provisions, to wit, “and at 6 o'clock every section not yet put shall be deemed to be put,” or even from time to time you see, “deemed to have been passed.”

**Mr Tilson:** Mr Chairman, the New Democratic caucus has chosen to delay the bill. I suggest that we proceed with the debate on the clause-by-clause.

**Mr Kormos:** One moment. I think we'd better get a clear understanding of this. This motion does not achieve that end. This motion merely says that one day shall be allocated. There's no deeming section. I put to you that in view of the fact that other motions have deeming provisions, we can't infer a deeming provision.

**Mr Tilson:** Let's proceed, Mr Chairman. Mr Kormos is the New Democratic House leader, and I trust he and the other House leader will debate this issue when he goes back to discuss why he has delayed this bill.

**The Vice-Chair:** Thank you, Mr Kormos. If I may just—

**Mr Kormos:** I'm not just going to delay it; I'm going to oppose it.

**The Vice-Chair:** Mr Kormos, you have made a point. I look at the order of the House that says one day is to be allocated. As the Chair, I would interpret that we would have to put the questions on the clauses by the end of the day. We have basically run out of answers from the parliamentary assistant, so I'm going to put the section to the committee.

Shall section 1 carry?

**Mr Kormos:** A recorded vote.

**The Vice-Chair:** A recorded vote.

**Mr Kormos:** And adjournment for 20 minutes, please, pursuant to the rules.

**The Vice-Chair:** Can we vote on it first?

**Mr Kormos:** No. That's what the adjournment is for.

**The Vice-Chair:** You want the adjournment before the vote?

**Mr Kormos:** Yes.

**The Vice-Chair:** Well, I'm asking.

**Mr Kormos:** No, no, the rules provide for it before the vote.

**Mr Tilson:** He wants to caucus it.

**The Vice-Chair:** We'll adjourn for 20 minutes.

*The committee recessed from 1719 to 1745.*

**Mr Tilson:** Mr Chair, we seemed to be tied down to a question that both Mr Bryant and Mr Kormos—

**The Chair:** Sorry, Mr Tilson. I do wish to put the question on these votes.

**Mr Tilson:** You wish to which?

**The Chair:** I do wish to put the question on section 1.

Shall section 1 carry? All those in favour?

**Mr Kormos:** A recorded vote

**The Chair:** This has previously been asked for?

**Mr Kormos:** Of course.

**The Chair:** This is a recorded vote.

**Mr Kormos:** You can only ask for an adjournment if it's a recorded vote.

### Ayes

Beaubien, Bryant, DeFaria, Guzzo, Kormos, Tilson.

**The Chair:** I declare section 1 carried.

Shall section 2 carry?

**Mr Kormos:** No—debate. In that regard, again, I would like Mr Tilson, as parliamentary assistant for the Attorney General, to please respond to the question about the prospect of an innocent victim who's obtained a judgment with an award for damages being precluded from enforcing that judgment against monies that would have been the property or assets of the perpetrator, the defendant in the lawsuit, if those monies had been delivered into the fund contemplated by Bill 69 by a book publisher or movie producer etc.

**Mr Tilson:** I'll try to answer the question as briefly as possible. That is a legal question and the answer is a qualified no. I say that because there may be situations—and Mr Kormos has given a factual situation which may or may not have issues or such things as fraud involved, in which case the group or the board or the compensation people, or whoever will be designated under the regulations, may determine that it's inappropriate because of those allegations of fraud and, notwithstanding a judgment, may choose not to—I can only repeat—provide those funds.

Having said that qualified no, I can only emphasize that it's the intention of the government and of the bill, which would be elaborated on with respect to the regulations, that that victim receive the compensation that is due to him or her, whether it's under a judgment or whether it's under a prejudgment claim.

**Mr Bryant:** Just so I understand, are you saying that if in fact there is some loophole or there is some shortcoming, it's going to be corrected via regulation?

**Mr Tilson:** No. I'm trying to answer directly Mr Kormos's question, which is a legal question as to whether—

**Mr Kormos:** On a point of order, Mr Chair: The bells are ringing. May I suggest that the Chair not view the clock, so that we can resume after the vote before the House?

**The Chair:** On that point of order, I understand that it's not permissible to do that.

**Mr Kormos:** To not view the clock?

**Mr Tilson:** The bells are ringing; we have to go and vote.

**The Chair:** Are the members ready to vote?

**Mr Kormos:** No. Mr Tilson, I interrupted you with a point of order. I'm going to try to wrap this up to accommodate the vote in the House in seven minutes.

**Mr Tilson:** I don't know how I can add to the answer that I've given you. It's not the answer you're looking for, but it's the answer that you're going to get.

**Mr Kormos:** I simply want to make it clear that I appreciate the parliamentary assistant using his best efforts to get a response, organize a response, to the question I posed. That in and of itself, I've got to tell you, causes me great concern, because the parliamentary assistant has very much indicated, with his best information with respect to the impact of the bill, very much in contrast to the Jackson bill, which would clearly have the opposite effect, because monies seized and deposited in the Jackson bill are there almost being held in trust for a potential litigant or a potential plaintiff—

**Mr Beaubien:** On a point of order, Mr Chair: How much time are you going to give us to get to the chamber tonight to vote?

**Mr Tilson:** We have six minutes, I hope.

**The Chair:** Enough time to get there to vote.

**Mr Beaubien:** How much is enough time? I have a medical condition with my knees whereby stairs are very difficult for me to handle. So I do need some time to get up there. I would like to see how much time you're going to give us to get upstairs. I would strongly suggest that I need four minutes to get upstairs.

**The Chair:** Following from that, is the committee amenable to my collapsing sections 2 to 21 for purposes of the vote?

**Mr Kormos:** I'm not finished my comments.

**Mr Tilson:** Mr Kormos could go on all night.

**Mr Kormos:** No, I told you—

**Mr Tilson:** I've got other plans for tonight. I'm not going to come back here and let Mr Kormos take me on into the early hours of the morning. We're hopefully going to finish this bill this afternoon. Mr Kormos has chosen to delay the bill, and that's his decision.

**Mr Kormos:** I'm not delaying the bill.

**The Chair:** We do not come back after the vote.

**Mr Kormos:** The government has presented a bill which is soviet in its impact, which permits the state to



go in and seize assets. No one quarrels with the prospect of seizing assets from a criminal, but then in the course of seizing those assets it would deny access by an innocent victim, pursuant to, let's say, a judgment obtained in a civil court by that victim, from accessing those assets. The New Democrats find that a particularly repugnant element of the bill. I simply, like so many other people here, have supported for too long the right of plaintiffs to utilize the court to determine liability, to assess damages, and I find this bill a repugnant contradiction of that right.

We believe that the repeal of the Jackson bill is a dangerous thing to do. There could well have been amendments to the Jackson bill to achieve some of the stated goals of the government, but the repeal of the Jackson bill and the replacement of it by Bill 69 is not acceptable, does not serve victims well, nor does it serve the interests of justice. I am ready to proceed with a recorded vote.

**Mr DeFaria:** On a point of order, Mr Chair: I would ask that sections 2 to 21 be put to the committee for a vote.

**Mr Kormos:** That's not a point of order. I'm ready to proceed with the recorded vote on the balance of the bill collapsed into one motion.

**The Chair:** This is a recorded vote. Shall section 2 through section 21 carry?

**Ayes**

Beaubien, Bryant, DeFaria, Guzzo, Tilson.

**Nays**

Kormos.

**The Chair:** Shall the long title of the bill carry? This is a recorded vote.

**Ayes**

Beaubien, Bryant, DeFaria, Guzzo, Tilson.

**Nays**

Kormos.

**The Chair:** Shall Bill 69 carry?

**Mr Kormos:** A recorded vote.

**Ayes**

Beaubien, Bryant, DeFaria, Guzzo, Tilson.

**Nays**

Kormos.

**The Chair:** Carried. Shall I report the bill to the House?

**Mr Kormos:** A recorded vote.

**Ayes**

Beaubien, Bryant, DeFaria, Guzzo, Tilson.

**Nays**

Kormos.

**The Chair:** It's carried. This concludes the business of this committee. We're adjourned.

*The committee adjourned at 1754.*





## CONTENTS

Tuesday 6 November 2001

<b>Prohibiting Profiting from Recounting Crimes Act, 2001, Bill 69, Mr Young /</b> <b>Loi de 2001 interdisant les gains tirés du récit d'actes criminels,</b> projet de loi 69, <i>M. Young</i> .....	J-591
---	-------

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### Chair / Président

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### Vice-Chair / Vice-Président

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### Substitutions / Membres remplaçants

Mr David Tilson (Dufferin-Peel-Wellington-Grey PC)

#### Clerk / Greffier

Mr Tom Prins

#### Staff / Personnel

Mr Doug Beecroft, legislative counsel

A2 ON  
XC14  
577



J-25

J-25

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 19 November 2001

# Journal des débats (Hansard)

Lundi 19 novembre 2001

**Standing committee on  
justice and social policy**

Food Safety  
and Quality Act, 2001

**Comité permanent de la  
justice et des affaires sociales**

Loi de 2001 sur la qualité  
et la salubrité des aliments

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Monday 19 November 2001

Lundi 19 novembre 2001

*The committee met at 1529 in room 151.*FOOD SAFETY  
AND QUALITY ACT, 2001  
LOI DE 2001 SUR LA QUALITÉ  
ET LA SALUBRITÉ DES ALIMENTS

Consideration of Bill 87, An Act to regulate food quality and safety and to make complementary amendments and repeals to other Acts / Projet de loi 87, Loi visant à réglementer la qualité et la salubrité des aliments, à apporter des modifications complémentaires à d'autres lois et à en abroger d'autres.

**The Chair (Mr Toby Barrett):** Good afternoon, everyone. Welcome to this regular meeting of the standing committee on justice and social policy on November 19. The agenda for today is Bill 87. We can commence with five minutes for any opening statements or questions. We will begin with the Liberal Party.

**Mr Michael Bryant (St Paul's):** I'll reserve my statements to dealing with it on a clause-by-clause basis.

**The Chair:** Then we'll go to Mr Bisson.

**Mr Gilles Bisson (Timmins-James Bay):** I have a couple of things I'd like to put on the record, some that I wish the presenters who are here today would help us with by giving some of their thoughts on them. The act, as we know, defines milk as cow's milk and treats goat milk and soy milk differently. I'd be interested in what people have to say about that when it comes to people who are in other types of business, such as goat farmers and others. I would like to know what their thinking is. Should we treat all milk the same or should we have a separation, such as is being presented in this bill?

There are other things we need to hear something on from the presenters, because we get so little chance when government legislation is passed to actually have people come and present at the committee level. I want to prime you with some questions I would like to have answered before we give support to the act. There are a number of issues. For example, there are changes to the act that will affect blended oil and dairy products. We are interested in knowing if there are any contentious issues here. Is that something we should be worried about? Is it something we need to give special consideration to?

The other thing is that the act deals with alternative service delivery areas. Basically, as I read that, it allows for the privatization of inspection and enforcement. As a

New Democrat, I worry about that. I think government services are much needed, especially in the wake of situations like Walkerton and others, to make sure we have proper enforcement and proper inspection. I would also like to hear what people feel about opening that up to the private sector. We know there already have been a lot of people let go, a lot of layoffs within the ministry when it comes to inspection and enforcement. I would like to hear what people feel about that vis-à-vis this bill.

The bigger thing is that much of what is in this bill is going to be in the regulations. In other words, we're being asked as members of the Legislature to vote on an act that, at first blush, has some parts in it that we can support, but the details of the act are actually going to be in regulations, so it's a bit like voting blind. It's like the minister coming to me and saying, "Vote for this bill. I promise you it will be fine." Then we pass the bill and the government passes regulations that may be contrary to what we thought was going to be in the bill. I would like to know what the presenters have to say about that. In other words, should we be more specific in this bill as to what should be contained in regulations? That's something that worries me somewhat.

The last thing is that the government says this legislation is cutting edge. I want to believe that, but without the extra funding for inspection and enforcement, I don't think anything will change. I'm wondering, without having the dollars in place, how does this really make it cutting edge? I'd like to hear a little bit about that.

I look forward to the presentations. I hope people are able to think about some of those issues and let us know what they think about them.

**The Chair:** We'll now go to the Conservatives.

**Mr Doug Galt (Northumberland):** I appreciate the opportunity to make a few comments about Bill 87, the government's proposed Food Safety and Quality Act, 2001.

First, I would like to take a moment to thank those who played a part in developing the proposed legislation. In addition to our ministry's lead role, both the Ministry of Health and Long-Term Care and the Ministry of Natural Resources have played an integral part in its development. We are all proud of this bill that would help to ensure the people of Ontario continue to enjoy a safe food supply based on an economically viable agri-food industry.

Also, thank you to the many food producers and processors from across the province who have taken the



time to provide input into the bill, re-affirming their commitment to providing safe, quality food for the people of Ontario.

Bill 87 was developed after extensive consultation with our stakeholders, including commodity groups, food processors, general farm organizations, public health workers, government ministries and consumer education representatives.

During the consultations we heard widespread agreement that the proposed act would provide the basis for improved food safety, increased food safety assurance and a higher level of consumer confidence.

Stakeholders told us that the act and its regulations should be scientifically based. Bill 87 provides the legislative backbone for a science- and risk-based food safety system. New science and technology have provided us with effective means of proactively identifying food safety risks along the food chain. By having the ability to identify hazards quickly, appropriate measures can be applied to minimize them before they pose a risk to public health. We can improve the safety of our food by identifying potential hazards and minimizing risks. And Bill 87 will help us do this.

Instituting a risk-based approach would also allow us to maximize the use of our resources. For example, if we discover that one food processing system has a much greater chance of introducing a food safety risk than a second process, inspection and enforcement efforts can be focused on the high-risk activity.

In addition to increasing the safety of the food, modern, science-based food safety requirements can have economic benefits for producers, such as reduced farm inputs, increased production, and expanded market access.

Stakeholders also told us that the proposed act should be flexible and transparent. The broad nature of the legislation allows for maximum flexibility while regulations are developed, and provides for improved information sharing and updated inspection and investigation methods.

We heard that the act should support industry food safety programs and should harmonize with national standards. We are committed to this to ensure safe food for people in Ontario, and to open new markets for Ontario producers and processors. A consolidated, modern food safety act supports the overall competitiveness of Ontario's agri-food industry and would allow it to maintain and increase market share.

The need for modernizing our food safety system was identified over two years ago, in 1999. Our food was, and continues to be, safe. In fact, Ontario has an enviable food safety record. But over the years our eating habits have changed, different types of food are available and more widely distributed, and there are new food hazards. The recent terrorist attacks in the United States have also made people more aware of the safety of the food they eat. We need to ensure that we have the tools to protect the food in Ontario.

Many competing jurisdictions, including the United Kingdom, Belgium, Australia and the United States, have

already adopted science-based approaches to food safety that are founded on risk analysis. Here in Canada, federal, provincial and territorial governments have finalized a common legislative base to guide us in the establishment of modern food legislation. Its scope is from field to fork, and it provides for the use and regulation of modern process control systems and on-farm food safety programs. Bill 87 is consistent with these principles.

Our partnerships with the Ministry of Health and Long-Term Care and the Ministry of Natural Resources establish important built-in checks and balances for Ontario's food safety system. Bill 87 would modernize and strengthen the framework of this system, while the food safety expertise and inspection and enforcement activities of each ministry provide an efficient and effective means of delivering programs to ensure public food safety.

Under the proposed act, the food safety and quality requirements of the current six food-related acts would be modified to include (1) standards and requirements to minimize public health risks from food-borne hazards; (2) quality standards to promote the marketing of Ontario products; (3) appropriate enforcement actions to ensure compliance; (4) new authority to ensure a timely and effective response to a food safety crisis, including the ability to trace back to find the source of a contaminated food and trace forward to determine where it has been distributed.

Food safety from field to fork is a high priority for the Ontario government, and our concerted effort to keep Ontario's food safety system among the best in the world is evidence of that commitment. We are constantly striving to maintain and improve the safety and quality of Ontario's agri-food products, and we want to ensure we use the most current methods available to do so. Bill 87 is a giant step in that direction.

The consolidated, modernized and enhanced food safety and quality legislation that Bill 87 provides would, together with the Ministry of Health and Long-Term Care's Health Protection and Promotion Act, form a solid foundation for the continued protection of public health in Ontario in this new century.

Bill 87 is good for consumers, good for business and good for Ontario.

**The Chair:** A question?

**Mr Bisson:** Yes, to the parliamentary assistant. You made a comment and I want to find out what you meant by it. You said the enforcement should be focused on high-risk activities. Can you explain that?

**Mr Galt:** I think it's logical, rather than just having a flat across. Putting all of our resources and all of our efforts on a flat, checking the low risk at the same level as the high risk, doesn't exactly make sense. You identify where the highest risk is and that's where you concentrate your efforts.

1540

**Mr Bisson:** But you wouldn't inspect others?

**Mr Galt:** You'd inspect them all, but you concentrate your efforts; you don't spread it evenly across.

**Mr Bisson:** So it's not a question of not inspecting in those areas that should be—

**Mr Galt:** Oh, heavens no. It's just where efforts might be concentrated.

**Mr Bisson:** I thought that was what you had said.

**Mr Galt:** Yes.

**The Chair:** Mrs McLeod, comments?

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** I apologize for being a few moments late.

In the absence of our critic, I would like not so much to make comments on the bill but to put a couple of questions on the record. I know that this section is five minutes for comments or questions. I'm not sure whether Mr Galt is prepared to answer the questions. I did listen carefully to his opening statement. I guess when you're listening to Mr Galt, you might wonder why anybody would have any concerns or any reason to object to the bill, but it has been our experience with many of this government's bills that the titles sound the trumpet of great advances but the substance of the bill is often somewhat less than might be advertised in the title and, in some cases, may even be a step backward. I guess that's the area in which I want to raise two questions, because this does stand as a mini-omnibus bill. There are a variety of inclusions in this bill, some of which we would certainly think are positive and some we might have some concerns with.

One of the things that seems to be almost slipped in—I believe my colleague did raise it—is the edible oils act repeal. I would like this to be an opportunity to put a question on the record for a response that is on the record, whether now or before the bill comes forward for third reading and for clause-by-clause, which I guess is tomorrow, so there wouldn't be much time to answer. But I'm sure the government has an immediate answer to this, because it has been the history of the Ontario government to not only be supportive of the edible oils act but to be in court actively defending it, and we have not yet seen any statement on the part of government as to why we have suddenly gone from a position where we are in court defending the edible oils act to calling for its repeal. Given the fact that it is a significant change in the long-time position of Ontario, I think it's fair that we should see some written reasons as to why the previous defences of this bill that have been made now no longer seem to be appropriate. So I would like to put that question on the record.

The other concern I'd like to raise and attach to a question is that this is one of those bills which provides tremendous regulatory power to government. There's not actually a lot in the bill of specific substance, but there's a lot of regulatory power, and one of the regulatory powers is to set fees. There has been a lot of comment by the minister and the parliamentary assistant that this bill will be enforced, that it will have the clout of enforcement power, but enforcement costs money and it certainly costs more money than the Ministry of Agriculture has been afforded by the Minister of Finance in the last few years. The power to set fees under those circum-

stances becomes a very serious concern and I would like some assurance on the record from the government that the enforcement of this bill is not going to be paid for by new fees levied upon the people who produce the food. Indeed, we want to be safe, but I don't think we want to buy that safety at the expense of putting farmers out of business. I'd like some assurance about the issue of setting fees.

**The Chair:** Fine. Thank you, Mrs McLeod. We can now commence with hearings. This is the first day of two days of hearings, and clause-by-clause will be next Monday.

## ONTARIO DAIRY SHEEP ASSOCIATION

**The Chair:** I wish to call forward our first delegation, the Ontario Dairy Sheep Association. Good afternoon, sir. If you wish to have a chair and if you could give us your name for the purpose of Hansard, we have 15 minutes.

**Mr Larry Kupecz:** Good afternoon, Mr Chairman. My name is Larry Kupecz. I am a director of the Ontario Dairy Sheep Association. We wish to thank the powers that be for allowing us to present today on behalf of Ontario's sheep milk farmers and Ontario's goat milk farmers.

I want to expand on the significance of this last sentence. The first aspect of significance is that both the sheep milk and goat milk sectors have worked for improved and harmonized regulations for these past many years. We recognize the need for regulation to protect our respective products. We need to be regulated for our own protection and the protection of those consuming our products. There is no question of this. Allowing us to speak today gives us great comfort in believing that we can influence the legislative environment in which our growing sectors can prosper.

The second aspect of significance in the sentence above is the fact that I am here today representing both the sheep and goat sectors. I am a sheep milk farmer but, in being here, I can represent both sheep and goat sectors. We strongly believe that in terms of food safety regulation there is no separation between dairy animals of one species or another. All dairy farmers, whether we are milking cows, goats, horses, sheep or whatever, are producing milk.

We, as farmers, don't compete with one another any more than cheese competes with yogourt or milk competes with butter. We complement each other in providing the consumer with nature's perfect food in a variety of formats. As farmers, we can and do speak for one another in that aspect. When one goes to the store to purchase dairy products, one goes to the dairy product display case. Perhaps, yes, if it is an exotic or expensive product you would look in the deli section, but the point is that milk products are grouped. Cow, goat and water buffalo all complement each other in offering the consumer a choice within the dairy product line.



Marketing experts would agree that the larger and more varied the product line offered, the greater consumer attention and sales volume to the whole line. Sheep milk products, goat milk products and cow milk products don't compete with one another on the shelf as much as they complement and enhance each other. With a few simple telephone calls, sheep and goat people could agree and co-operate on this presentation. Yes, at times when the marketing gloves come off and we're talking product positioning and the search for product differentiation, goat milk may be represented as a healthy alternative to cows milk, and, as any gourmet knows, sheep milk sets the standard for cheese, and no one can compete with cow milk on price. But as an industry, regardless of what animals the farmer happens to be milking that day, we're all in the same industry together.

The key element here is that the various milk products work in concert and milk producers, regardless of the animal milked, can work for the good of the entire industry to build a more valuable food group. We are equally concerned about the quality and value of cow milk, water buffalo milk, horse milk, goat milk, sheep milk, powdered milk, chocolate milk or whatever type of milk is out there. Even our Minister of Agriculture can be quoted in Hansard as saying, "After all, milk is milk, whether it comes from a cow or from a goat."

Damage to the image of one species' milk negatively affects the image and value of another. One species' milk less competes with the others than reinforces the value of the others, and having all milk-producing species included under the same piece of legislation and following a comparable set of regulations only makes sense.

The message that I have for you today as a representative of dairy farmers is to please retain the Milk Act and define milk therein as milk from any mammalian species.

It was a major surprise for sheep and goat farmers to learn of the retention of the Milk Act. In the consultation meetings with OMAFRA, we had been told that seven acts would be folded into Bill 87. We were presented with the objective of having a single, seamless piece of enabling legislation that would handle all aspects of food from field to fork. We took for granted that this was the way it was to be. We were given no indication that there were any options or that this aspect of the legislation was negotiable.

1550

It was not until two months after first reading of Bill 87 that goat and sheep milk producers learned the Milk Act would actually stay in place, and more critically, that any other species' milk, other than cow milk, would be excluded from the act. There's no question that the Milk Act has served the industry well for decades for both marketing and quality issues. We have a prosperous cow milk sector providing fair value and wholesome, safe food to Ontario consumers. Being farmers, we agree with the comment, "If it ain't broke, don't fix it." Keeping the Milk Act only makes sense.

Even though we have worked to the completion of the draft regulations for goat and sheep milk, we can't be

certain these will actually be put into effect. We are confident that the strong consumer demand for our products and the good working relationships we have built with OMAFRA will stand us in good stead for effective rules and procedures. We agree the Milk Act should be retained because it provides strength to the cow milk sector. We disagree that cows should be the only species to which this act applies.

It has been confusing for us to understand why any other species' milk has been excluded from the Milk Act. Why divide the industry by species and why stop at cows? Why not exclude Jersey cows from the Milk Act? Jersey cow milk is distinct. What are you going to do when water buffalo start being milked in the province? They are cows. Is water buffalo milk going to go under the Milk Act or the Food Safety and Quality Act? No one has offered me a plausible explanation of why the Milk Act has been so designated.

Goat milk has been well served by the Milk Act as a vehicle for regulation for decades. Goat milk farms have been licensed and inspected. Quality assurance for goat milk was required by the act just the same as for cow milk, and goat milk consumption has been growing steadily for the last 30 years.

Sheep milk farms have been begging for inspection and testing, even if it's on an unofficial basis, while we were waiting to be included in the Milk Act. Sheep milk volume in Ontario could be argued as being the fastest growing of any food commodity. Suddenly in June of this year, without consultation with the goat milk sector, goat milk seems to have been arbitrarily removed from the act by redefining the word "milk" as used in the act.

The arguments offered to us have been that the Milk Act has marketing aspects that refer only to the cow milk industry. Believe me, we sheep milk farmers and goat milk farmers would dearly love to have legislated marketing aspects that guarantee a monthly milk cheque and protect us from unfair competition. I'll leave those issues to another time and place, but it has to be recognized that the marketing aspects of the act have nothing to do with the quality and safety aspects.

Mr Coburn is recorded as saying, "The cow milk industry has an effective legislative base in the existing Milk Act. This act covers not only the food safety and quality components ... but also the marketing aspects." That again is from Hansard. Will the marketing aspects of cow milk be damaged by having another species' milk in the Milk Act? On the contrary, it can only be enhanced by having all milks treated equally so as to remove any stigma that one milk has better food safety coverage than another, something that is only bound to happen if regulation is split between two acts.

Have the marketing aspects of the Milk Act been a burden to having it cover quality and safety issues for other species' milk in the past? Not in the least, as goat milk regulations have resided there for decades, and all of the work over the past many years by the sheep milk sector and OMAFRA has been to include sheep milk in the Milk Act.

These represent proposed regulations for sheep milk and sheep milk products, year 2001; proposed regulations for goat milk and goat milk products, year 2001. These were last May's publication. That was one month before the first reading of the bill. If it was possible six months ago, why is it impossible now? The answer should be obvious. This whole issue is merely an oversight. All that is needed to correct the situation is to re-amend the definition of "milk" in the Milk Act so that any milk from any species is included.

We ask of you today to make a very small, easy correction to the Milk Act. We ask to have "milk" defined under the Milk Act as "milk produced by any mammalian species."

In summary, we're asking for two things. One is already done, so essentially we're asking you to make one small decision, one small inclusion for us. Thank you.

**The Chair:** Thank you, sir. We have about a minute. Very briefly, Ms McLeod.

**Mrs McLeod:** Let me just understand, then, because I'm sure you've made this representation to the government since you realized that the Milk Act was to be retained and that your sector was being excluded. Are they saying that they can't include you under the safety and inspection portions of the Milk Act without automatically including your sector in the marketing aspects, which would bring you into the whole quota system etc? Is that the answer they're giving you as to why they don't make this very simple change to the act?

**Mr Kupecz:** I can only reply that I don't believe so. No. There is no quota system as applied to sheep and goat milk. It just doesn't apply.

**Mrs McLeod:** And you would automatically come into the existing quota system for cow's milk if you were under the act for other purposes?

**Mr Kupecz:** Not at all. The quota aspect—

**Mrs McLeod:** So there's no downside to including you in this. It's basically a safety and inspection issue, then.

**Mr Kupecz:** Yes, and we've been assured that both acts would treat us equally. If they are, fine, my question is, if they treat us equally, can't we have the option of which act we go under?

**Mrs McLeod:** A fair question. I'd like to table that for a response from the government, Mr Chair.

**The Chair:** Mr Bisson, we just have a minute for each party.

**Mr Bisson:** You referred to regulations passed last May. Do you want to clarify that, please?

**Mr Kupecz:** Yes. These are proposed regulations. We have worked for I don't know how many years on converting regulation 761, which applies to cow's milk, to having some sections that will apply to sheep milk and to goat milk.

**Mr Bisson:** And you're included in those regulations?

**Mr Kupecz:** Sheep milk is not now.

**Mr Bisson:** But in those regulations, was it included? That's what I didn't catch.

**Mr Kupecz:** In the proposed regulations, yes.

**Mr Bisson:** So if you're included in the proposed regulations, the question is asked, where are you in the actual draft? That's what you're asking us, basically: What happened in between?

**Mr Kupecz:** I suppose, yes.

**Mr Bisson:** I'd like to get the answer from the parliamentary assistant.

**The Chair:** We have just a brief minute, Dr Galt.

**Mr Galt:** I'm curious. You've indicated that you'd be equally treated—I think those were your words—under one act or the other, but you would prefer to be under the Milk Act rather than coming in under Bill 87. Since you'd be treated equally, what would be the advantage for you as a sheep milk producer or a goat milk producer in being in the Milk Act versus being in the Food Safety and Quality Act?

**Mr Kupecz:** We are more comfortable there.

**Mr Galt:** So it's a comfort feeling that milk is milk and you would be together under that particular act, whether it be sheep, goat, horse, water buffalo, whatever?

**Mr Kupecz:** That's correct. It only makes sense to have all milks under an act which is called the Milk Act.

**Mr Galt:** But when it comes to regulations, as far as quality production, you're not uncomfortable one way or the other as it relates to the quality; it just relates to the position you would like to have it in.

1600

**Mr Kupecz:** We are staring into a void as far as the regulation things go because all we'd have in front of us is proposed regulation. But I have the assurance from the good people at OMAFRA that all that work we put in is not for nothing, that the work on the regulations is going to mean something. Exactly what it is going to mean, we can't tell yet, as the regulations are only proposed regulations. But I would put it back to you that if it's OK with you folks which one we'd go under, and there's already the assurance that we will have good food safety issues under the Milk Act, why not be there?

**The Chair:** We're pretty well out of time. On behalf of the committee, we certainly wish to thank you for coming forward on behalf of the Ontario Dairy Sheep Association.

## ONTARIO FEDERATION OF AGRICULTURE

**The Chair:** I would call forward our next delegation, the Ontario Federation of Agriculture. Good afternoon, gentlemen. We'll ask for your names for the purposes of Hansard. We have 15 minutes.

**Mr Jack Wilkinson:** Thank you very much. My name is Jack Wilkinson. I'm president of the Ontario Federation of Agriculture. Actually, Neil is the one who has really piloted the work within our organization and tracked it all the way through. We've got a convention going on, so I've been speaking too much. Neil Currie is our general manager and is going to give our presentation.

**Mr Neil Currie:** Thanks very much, Mr Chairman and the committee, for having us present to you today.



We have been following quite carefully the draft legislation through the consultative process. We are very interested in this. We've had representatives from the food safety directorate address our board of directors in terms of the development of the legislation and its intent. In the late summer, we took the opportunity to file an extensive list of questions with the directorate for clarification. That certainly helped us crystallize our views on the legislation.

To be honest, we have been struggling and continue to struggle with this legislation. It is a very comprehensive, extensive piece of enabling legislation. While we understand the nature and conditions of enabling legislation, we are probably more concerned with what may come, what is yet to come, through the regulatory process. So a lot of our comments are in terms of concern over what may ensue from the enabling legislation, but also over various parts of the legislation itself.

Our interest in this bill is in particular with the farm sector. We appreciate that it's a consolidation of various pieces of legislation that currently address food processing issues, primarily. Other than the current Milk Act, though, there are no statutes that impose themselves on the farm sector to the degree that this bill currently does. As such, we are very concerned that the bill may reflect a significant intervention in the farm business that we represent.

We do recognize the need for food safety legislation. We recognize the need for improved food safety systems. In fact, our farmers are working very hard with their national commodity representatives on their own food safety systems to be implemented on the farm. There's no question that there's a recognized economic and moral imperative at the farm sector for improved food safety. But we are concerned that the authorities that will be discussed and potentially granted with this legislation must be warranted, they must be effective, they must be efficient and they cannot be burdensome on the primary production sector.

Some of the consultative pieces provided some very good background to our brief. One in particular, in a section labelled "The Bottom Line," indicates what the purpose of the proposed act is. If I can quote from that, it is first "to deter the distribution and sale of specific foods, agricultural or aquatic commodities that are contaminated, unfit for human consumption or pose a human health risk;" second, "to deter fraud or misrepresentation of food products or commodities;" third, "to clarify industry's responsibility for ensuring that the food it produces, processes, distributes and sells is safe;" fourth, "to clarify government's authority and responsibilities for ensuring that industry meets its obligations under the proposed act and regulations; and," finally, "to provide government with the appropriate authority to take action to investigate and control food safety threats or outbreaks of food-borne illness."

We agree and support these objectives as stated and we suggest that they be used as the guide by which the legislation should be measured and judged.

The legislation must also be judged against its impact on industry per se. Again, we're restricting our comments primarily to the primary food production sector, the farms. We're suggesting, because it is so comprehensive and because of the potential intrusive nature of the regulations, that a thorough review of the costs and benefits of this type of legislation be conducted and be measured against the anticipated benefits in terms of public health.

Further, we're suggesting—as Dr Galt suggested earlier, it's risk-based legislation, food safety risk-based systems—that a thorough risk assessment be conducted in terms of food safety circumstances at the farm gate currently and then determine, possibly at the regulatory stage, if the level of application of regulations and this legislation is applicable at the farm sector. In other words, is it necessary and is it sufficient, based on that risk assessment? What is the risk that an unsafe product is leaving the farm, given what's already in place at the farm sector?

We believe that the farm sector itself has taken a tremendous amount of initiative and introduced internationally recognized HACCP-based systems on-farm. There are some 16 national commodity organizations, including horticulture and including the meat sector and the poultry sector, working on HACCP-based systems for on-farm food safety programs. It is proven internationally that HACCP-based systems or HACCP systems are more effective in terms of control of food safety risk and more efficient in terms of the cost of controlling that food safety risk.

The farm sector has taken the initiative to promote those programs across its producers. They've taken the initiative to work very closely with CFIA in terms of recognition of those food safety systems so our consumers in Canada and our customers internationally can be assured of the quality and the safety of the products that we're producing.

Our suggestion is, and it's not clear in reading through the legislation that the intent is there, while we believe the provision is there or it's possible, using the legislation, to focus on HACCP-based food safety systems, we believe it is imperative that the government clearly indicate its commitment to HACCP-based systems on-farm and make that the foundation of the food safety initiative, rather than the extensive inspection program that has been proposed or that we see proposed in the legislation.

The notion that one can inspect end quality and safety is a notion that dissolved a number of decades ago. We believe that while the intent may be there, it is not clear enough that the legislation should be focused on HACCP systems.

There are a number of other issues in terms of some of the specifics of the legislation. You have those in our brief. I will just draw your attention perhaps to the summary and make some concluding comments.

While the existence of such legislation is quite necessary and is in fact, if properly cast, welcomed by

the food production sector because it in itself will provide the assurance to our consumers and our international customers that we are serious about the products we produce and that we're serious about marketing safe products to them, the existence of that legislation cannot be perceived as a substitute for safe food handling practices across the entire food chain, including food service and at-home food preparation. We would encourage this government and other governments to join with the food production and food processing sector to promote safe food handling practices. It is only as good as the food prepared in a safe manner. Contamination can happen at any place throughout the chain. So consumers, if they are to reap the benefits of our extensive efforts in promoting and practising safe food handling practices, must do so themselves, and we would encourage you to help us promote that with them.

With that, I'd be happy to briefly answer any questions you might have.

1610

**The Chair:** Thank you, Mr Currie. We've got about a minute and a half each. We'll begin with the NDP.

**Mr Bisson:** I have two quick questions. I raised this originally when we had an opportunity to make comments. The body of this bill, or most of what's in this bill, is going to be done by way of regulation. What comfort level does the OFA have, seeing that most of what's going to happen by way of this bill is in regulations? Should it be more clearly spelled out where the regulations are going?

**Mr Currie:** There's very little comfort, frankly. In fact, it's quite an intimidating bill in terms of what the potential is. Our suggestion is that there be a very comprehensive risk assessment prior to casting that regulation. Is that regulation necessary? It's an intrusion on the farm sector that isn't there currently. Our voluntary HACCP systems, we're suggesting, may provide a better process for promoting food safety. So we would like a very thorough look at that. Before we start licensing farms, licensing farmers and putting potentially burdensome regulation on them, we'd like to look at the bigger picture.

**Mr Bisson:** I find it passing strange because this government's mantra all along has been to do away with red tape, to do away with things that are in the face of business or farming or whatever it might be. It seems to be contrary to that. I wondered what your comments were on there.

**Mr Currie:** Yes, we have expressed some concern like that. We would like to definitely work on the regulatory side of things after this bill is passed.

**Mr Bisson:** You talked about a cost-benefit review. Has the OFA done any work on that end to take a look at whether there is any benefit?

**Mr Currie:** We have not. I can't say for sure if anyone else has yet. There may be something in process I'm not aware of.

**Mr Bisson:** We need to have that before—I just want you to know that this thing is going to be done by next

week. How do you feel about that? No cost-benefit is going to be done before next week.

**Mr Currie:** Presumably there would be one prior to any implementation of regulations.

**Mr Galt:** On the reference to the red tape and the government being concerned about excess regulation, there's no question that nice, crisp, clear, transparent, understandable regulations are welcome by anyone, not the excessive duplication the Red Tape Commission is looking at.

In the recommendation, the concern about making reference to environmental conditions and animal welfare, it may not be directly quality but some people might interpret it that way. Certainly that question is being asked more and more, whether it's how paper is produced, or whatever the commodity, the particulars are. As the economy improves in this province—it's kind of levelling out there; it may be stepping back a wee bit—and as you move up, you start to see more concern about environmental issues, more concern about animal welfare issues, and I can see people starting to ask more and more for this down the road. Do you not see this? I know you're saying it could be dealt with elsewhere, but what are your thoughts behind this?

**Mr Currie:** It's a little bit vague in the legislation what the intent was, what is meant by an environmental condition, what the meaning of animal welfare is. Clearly conditions in which animals are raised and their welfare, if I can use that term, can affect the safety of the products that are produced from them. There's no question about that. But I think the issue is being muddled considerably. It becomes very emotional at that point.

When you introduce notions like environmental conditions and animal welfare into the whole realm of food safety, I think it's going to muddy the issue. You're leaving very big judgment calls for the directors and the inspectors working in the field as to what the intent was and/or making a very difficult task of defining it in the regulatory process. We feel it is best dealt with elsewhere under legislation that deals specifically with environmental conditions, legislation that deals specifically with the welfare of animals, and not muddy it as a food safety issue. The food safety file is clearly big enough on its own without bringing in those two other considerations.

**Mrs McLeod:** I particularly want to focus on your statement, because I think it's an important one, "We must not write overwhelming legislation that can be used to develop a punishing regulatory system that stifles production agriculture in Ontario."

You're smiling. Are you trying to disown that statement?

**Mr Currie:** It's just a little turgid, that's all.

**Mrs McLeod:** I think it's important because it raises a central issue about the legislation, which is that it's left entirely to a regulatory regime. One of the realities of regulatory regimes is you have no assurance that it's not going to become punitive, whether that's the intent of the current government or not. Without clear legislative, in law, statements of intent and more substantive statements



as to what the regulations can direct, it's wide open. My question to you is, when you say you would hope your risk assessment would be done prior to the enactment of the regulations, in fact don't you need to see this legislation tabled until the risk assessment is done and until there can be specific intents and clarity written into law so that it has to come back in public session to be changed? Mr Galt may talk about transparent regulations. There is no such thing. Regulations are done behind closed doors. You don't know about them until they hit you.

**Mr Currie:** Hopefully we're going to be consulted extensively in the development of the regulations.

**Mrs McLeod:** Hopefully.

**Mr Currie:** I'll leave that process to you and other parliamentarians. There is probably a need in enabling legislation to make it appear to be extreme, to deal with the extreme cases, so that if there is a food poisoning outbreak, for example, the tools are there to address it quickly and effectively. We're not arguing with that. Our concern is that these regulations, or regulations to be developed, which may be applied to the farm sector where they are not currently, could potentially be burdensome, could potentially undo the good work we've already done on a voluntary basis, introducing HACCP systems that we feel are more effective. That's our concern.

The legislation itself deals with food processing and so on and so forth. Our concern is its application through the regulations to the farm sector. We feel there's a better way and we would like the recognition of those systems clearly put in here so that everybody understands, when regulations are being developed, that we want to facilitate the existing process.

**Mrs McLeod:** I agree, but that means you need amendments to the legislation before the legislation receives third reading. I appreciate the fact that it's difficult for the OFA to be seen to be opposing something that stands in the name of food safety. That's a real dilemma. But it just seems to me that the agricultural industry in this province is wide open under this. I raise as one example the issue of the setting of fees. That surely is a concern to your members. Do you not need some clarity around that issue of who is going to pay for the enforcement of this law?

**Mr Currie:** There are comments in here in terms of the provisions for licensing. We feel it's unnecessary. The provision for permits on each and every piece of equipment potentially, we feel, is going to create a level of fairly expensive bureaucracy that likely the primary producer would end up paying a lion's share of. Clearly we're not in favour of that. There are better ways.

**The Chair:** I wish to thank OFA for coming forward.

**Mr Wilkinson:** Just one comment: there is A Taste of Ontario taking place at the airport strip at the International Plaza starting at 7 o'clock that will host Ontario wine, beer and food. You're all welcome to come there. I think you'll have a wonderful time. We would certainly like you—

**Mr Currie:** And it's extremely safe.

**Mr Wilkinson:** And it's extremely safe food.

## ONTARIO SOYBEAN GROWERS

**The Chair:** Our next delegation is the Ontario Soybean Growers. Good afternoon, sir.

**Mr René Petroski:** Good afternoon. My name is René Petroski. I'm the research and technology coordinator with the Ontario Soybean Growers. The Ontario Soybean Growers would like to thank the committee for the opportunity to make this presentation.

The Ontario Soybean Growers expresses its support for Bill 87. In particular, we applaud the government for its initiative in repealing the Edible Oil Products Act. The Edible Oil Products Act denies marketing opportunities for Ontario soybean growers, limits consumer choice, does not contribute to food safety, creates an internal trade barrier and impedes development and economic opportunity in Ontario.

What does the Edible Oil Products Act do? It makes it illegal to manufacture or sell in Ontario any product that combines a non-dairy oil or fat with a dairy product and is an imitation of, or resembles, a dairy product. Ontario is one of the few jurisdictions in the world to prohibit the manufacture and sale of these products. The Ontario Soybean Growers applauds the government for its initiative to repeal the act through the passage of Bill 87.

### 1620

The Edible Oil Products Act effectively prevents the manufacture and sale of many types of soy foods and soy-based dairy analogues in Ontario. Soybeans are the largest acreage cash crop in Ontario, and production doubled through the 1990s due to the development of soybean varieties adapted to our climate. In 2000, Ontario's 24,000 soybean producers harvested over 85 million bushels of soybeans with a farm gate value of over \$600 million. Over 80% of Canada's soybeans are grown in Ontario, and approximately 60% to 70% of the crop is crushed for the edible oils market and soymeal. The edible oils dairy substitutes sector makes a significant contribution to the Canadian economy, accounting for over \$570 million in national sales and employing approximately 11,000 people.

The margarine industry accounts for just over half of the total edible oils-based dairy substitutes market, with total sales of over \$300 million and employing approximately 6,000 people. The majority of all economic activity related to the margarine industry in Canada occurs in the province of Ontario. The majority of soybeans used in margarine for the Canadian market are grown in Ontario. More than 85% of margarine produced for the Canadian market is manufactured in Ontario.

The repeal of the Edible Oil Products Act would stimulate the creation of a new market for edible oil-dairy blended products in Ontario, enabling consumers to choose from a greater array of new products in addition to existing dairy products and edible oil products. The potential increase in demand for soybeans as a result of

opening up the market for margarine-butter blends is estimated at 91,000 tonnes, which represents a 5.2% increase. Based on the market share in other jurisdictions—blends have 3% of the global dairy and edible oil market—the immediate market potential for blends in Canada in terms of direct sales is approximately \$226 million, including both retail and food service sales. This corresponds to direct employment of about 2,200 new jobs. In Ontario alone, the direct sales potential for the blends market is approximately \$66 million with corresponding direct employment of 660 new jobs.

In addition to the creation of a third market for edible oil-dairy blends, repeal of the act will create a market for dairy ingredients demanded by edible oil producers who are developing blended products.

Ontario edible oil-prohibited soy foods are available in other provinces and elsewhere in the world as consumers have demanded access to soy-based dairy alternatives for cultural, medical, religious, social, health and personal reasons. For example, lactose intolerance is a condition that affects 21% of Canadians and prevents those affected from enjoying regular dairy products. Food manufacturers outside Ontario have responded to consumer demand by producing a variety of new products that are not available in Ontario.

There is a wide array of existing regulations surrounding dairy products. Current federal and provincial legislation provides the framework to ensure that consumers will be able to tell the difference between a dairy product, an edible oil product and a blended dairy-edible oil product. The labelling and advertising of blended products are regulated in the same manner as other unstandardized food products. Subsection 5(1) of the Food and Drugs Act prohibits selling or advertising any food in a manner that is false, misleading or deceptive.

Other federal and provincial laws, including the federal Competition Act, the Consumer Packaging and Labelling Act and certain provincial business practice, consumer protection and dairy laws prohibit misleading or deceptive advertising and labelling, and would prohibit, for example, the labelling or advertising of edible oil products in a way that would suggest to consumers that the products are in fact dairy products.

The Canadian Food Inspection Agency's Guide to Food Labelling and Advertising addresses standardized and unstandardized dairy products. There are additional principles to ensure clear communication with consumers as follows: neither should purport to be a substitute or imitation of the other; all food products shall declare all ingredients; the name of either product should be distinct and not imply it is a substitute for the other; blends of two or more distinct products should have unique names, yet clearly indicate the nature and proportion of the contributing products.

It is difficult to see Ontario supporting an antiquated law, seen virtually in no other place in the world, which also promotes trade barriers between the provinces of Canada. This comes at a time when Canada needs every measure of manufacturing and R&D efficiency to compete in world markets.

Last year, the Federal/Provincial/Territorial Agri-Food Inspection Committee recommended that "provinces should deregulate products that imitate or resemble dairy products, whether or not they contain dairy ingredients, and defer to existing federal regulatory processes that address the consumer information and fraud issues."

Over one year ago, the province of Ontario consulted with stakeholders on this recommendation and the Ontario Soybean Growers as well as the Edible Oil Foods Association of Canada responded favourably. In light of this recommendation and the favourable responses received, Ontario should proceed to repeal the Edible Oil Products Act and allow the sale of dairy analogues in this province. This position is consistent with the objective of most governments to promote food safety and consumer protection; it supports the concept of uniform regulatory treatment of all foods; and it allows the marketplace to respond to consumer interests with a wider choice of food products while at the same time maintaining labelling requirements that protect consumers from misleading or inaccurate product representation.

In addition to this, repeal of the Edible Oil Products Act would allow the development of new products. The Ontario Soybean Growers is actively working to develop the domestic soy food industry. The production of food-grade soybeans allows Ontario growers to capture a premium for their crops. Over 95% of these soybeans are currently exported. The repeal of the act would allow Ontario growers the opportunity to market more of these specialty varieties domestically and thereby increase the demand and premiums paid to producers for these varieties.

The Ontario Soybean Growers is also developing food-grade soybeans that are more suited to the tastes of domestic consumers. The Edible Oil Products Act represents a significant barrier to the commercialization of these soybean varieties in Ontario. This could result in growers outside Ontario capturing premiums for soybean varieties that were developed with Ontario research dollars.

The demand for soy foods has skyrocketed in recent years, and significant resources are being dedicated to the development of new products. Processors will be unable to invest in the development and manufacture of these products in Ontario if the Edible Oil Products Act remains in place. Processors will choose to invest in new facilities and technology outside Ontario.

With that I'd like to close, and I thank the committee.

**The Chair:** We've got just under a minute for each party.

**Mr Galt:** Thanks for the presentation. You made comments about how it would improve the soybean industry. How much damage do you think it would do to the dairy industry as it relates to sales and employment?

**Mr Petroski:** I'm sure dairy will comment on that.

**Mr Galt:** I'm sure they will too.

**Mr Petroski:** These products are distinct, and we see that there will be new opportunities. This will create a third product class where there will be new marketing



opportunities for both industries. There could be a temporary shift away from dairy, but there could also be a temporary shift away from the oil side because you have a blend; you could have people switching from either industry. In the long-term, we believe it will result in an increased market share for both parties as new soy food products and dairy analogues are permitted in the province.

**Mr Galt:** If I could just quickly, Mr Chair: there was some concern about content. It relates to content if the act was pulled out. You indicate on the bottom of the first page that federal regulations address food safety, labelling and composition. I was under the impression that they needed more regulations or changes to be able to deal with it if the act was removed. Where do you get your information—or do I have a misunderstanding?

**Mr Petroski:** My understanding, in looking at the Food and Drugs Act and the provisions in there, is that there are already provisions for cheese, butter and milk that regulate what those products are. For example, I can't create a soy product and call it cheese. I can't take a soy beverage and call it milk. There are already regulations.

**Mr Galt:** But to control what percentage of each would be in it?

**Mr Petroski:** There are federal regulations that control the naming of cheeses. There are over 40 kinds, I believe, that specify what goes into different cheese products. Is that what you're asking?

1630

**Mr Galt:** I think there's a lot of concern over how much would really be dairy and how much would really be soybean. Is it 40-60? Is it 10-90?

**Mr Petroski:** That would be addressed on the packaging.

**Mr Galt:** And the feds, you're saying, can control it.

**Mr Petroski:** The federal government controls the naming of certain dairy products, but they wouldn't allow these products to have the same names as dairy products that are there now.

**The Chair:** Liberal Party.

**Mrs McLeod:** I appreciate your being here today because I think it's important for us to hear the perspective of the soybean producers on this whole issue of the edible oils act repeal. We will hear something different from the dairy farmers tomorrow, obviously.

One of their frustrations was that this hit them by surprise. They didn't know it was happening, so there hasn't been an opportunity for us, at least, to participate in a real public discussion about it. You've brought another side to it, obviously, that the government has heard in the past. I would assume you've been consulted on this, or at least have made representations to the government, so they would know you were supportive of the repeal of the edible oils act.

**Mr Petroski:** This has been an issue for our organization for a number of years. Well over a year ago there was a consultation on the federal-provincial agricultural trade committee's recommendations as provinces dereg-

ulate. We were certainly present there and indicated our support.

**Mrs McLeod:** Have the soybean producers ever been in court taking a different position on the edible oils act from the traditional role of the provincial government? Soybean producers in Ontario have not been witnesses at that?

**Mr Petroski:** Not to my knowledge.

**Mrs McLeod:** I'm curious about the fact that—if our critic were here, he would have the answer to this, so allow me to ask a naive question. As far as I know, the only Ontario producers that have made representation in support of the repeal of the act have been soybean producers. I understand that the majority of people who market a blended product are offshore producers—coconut oil, palm oil. Is the limitation on soybean, the blended products, a limitation in Ontario particularly, then, that we haven't seen that marketing of the blended product?

**Mr Petroski:** Those blended products are currently illegal in Ontario. You can't get them. By default, then, manufacturing facilities outside Ontario would be used. These blended products, as far as I know, are available in Alberta, British Columbia, Saskatchewan, New Brunswick and Nova Scotia. These are butter-margarine blends now that I'm talking about.

**Mrs McLeod:** With soy as one of the major components of the blended product, or is it still largely an offshore oil product?

**Mr Petroski:** I don't know what the major components would be, because they're not manufactured in Ontario. Given the oilseed industry in Canada, it's most likely they would be soy- or canola-based. Basically, the consumer demand for those types of oils, the tropical oils, has declined dramatically. When those are labelled as such, people prefer canola or soybean oil. But I have not seen the products in other jurisdictions.

**The Chair:** On behalf of the committee, I wish to thank you for your presentation on behalf of the soybean growers.

#### CONSUMERS' ASSOCIATION OF CANADA—ONTARIO DIVISION

**The Chair:** Our next delegation on our agenda is the Consumers' Association of Canada. If we could have your names for Hansard, and then we have 15 minutes for your presentation.

**Ms Theresa Courneyea:** My name is Theresa Courneyea. I'm the president of the Consumers' Association of Canada, Ontario branch. That doesn't make me an expert on food by any stretch of the imagination. However, I have to my right Ruth Jackson, a long-time commentator on food and agricultural issues for the Consumers' Association of Canada both at the national and provincial levels. She has done the majority of the work in consultation with the rest of us and will make the presentation on our behalf.

**Mrs Ruth Jackson:** The Consumers' Association of Canada is a not-for-profit organization which has been actively studying and commenting on consumer issues in Canada and in Ontario since 1948. Although the association may pursue any consumer issue, food and agriculture have always been our special interests. Our members have devoted many hours to provide a consumer perspective in committees studying such things as salmonella contamination, water uptake in poultry processing, marketing problems in poultry, eggs, potatoes, milk, fresh fruits and vegetables etc. Irradiation of food for bacterial control, the use of rbST in milk production, free trade in food products with the US and genetic modification of crops for improved performance are controversial areas of interest where we've tried to bring a consumer perspective to discussions.

We are happy to have this opportunity to present our thoughts on Bill 87, which has been described as legislation from field to fork. We congratulate the government on undertaking this reorganization and rationalization of our food system. Overall we think the concept is good and should bring more uniformity and fairness to our food system, while creating greater efficiencies in the use of administrative and enforcement personnel.

However, although the consumer is the end of the food system, there is often little attention paid to qualities that are important to consumers. Although grade standards are often carried over to the consumer at retail stores, the criteria for those grade standards do not adequately address some of the consumers' concerns with the product. For instance, flavour, juiciness, vitamin or amino acid content, and bacterial or pesticide contamination are virtually absent from grading criteria. The current system is based mainly on cosmetic appearance as a basis of payment to producers. I would say that milk grading is perhaps an exception to the above, but that is a little different.

We feel consumers must be more involved and better informed if we are to be responsible partners in the food system. Many errors in food handling can and do occur in consumer kitchens, resulting in illness, lost time from work etc, yet this problem is not addressed. Some of the old ways of informing and educating consumers no longer exist. The printed information from the government is much scarcer than it used to be. Home economists used to answer the phone and give answers to consumer questions; that is gone. We wonder what will replace the old methods of informing consumers about proper and safe food handling.

Although the present Milk Act is very detailed and specialized, we object to the exclusion of cow's milk from Bill 87, especially when milk from goats, sheep and presumably any other animal is included. We feel that all milk should be regulated by the same act. Consumers should have the same assurance of safety no matter what the animal source of the milk may be. Standards for specific nutrient content or components in milk from different sources must be established and clearly noted on packaging.

We believe that Ontario should accept national standards for milk products. One group of products not available to people in Ontario but available to other Canadians are those involving the replacement of animal fat with vegetable fat. Many consumers today wish to reduce their consumption of saturated fatty acids, and milk fat has a high percentage of these saturated fatty acids. Replacing these saturated fatty acids with fats containing polyunsaturated and monounsaturated fatty acids from vegetable sources can produce a palatable product that many believe is nutritionally superior.

When food is safe and appropriately labelled, we believe it is the marketplace that should decide if the demand is sufficient to allow such products on store shelves. It is not the government's role to decide whether or not they have market access. Either the Milk Act or Bill 87—preferably Bill 87—should allow these products in Ontario. CAC Ontario recommends that Ontario accept the national standards for dairy analogues.

While we favour many of the consolidations in Bill 87, without seeing the regulations it is difficult to comment on many things important to consumers. We find information on actual enforcement sketchy, and without adequate enforcement the bill has little value. What assurance can you give us that there will be enough well-trained inspectors? Will there be a no-cost, easy way for consumers to report violations? We're in the marketplace all the time, every day. We see the violations. Will any user fees for producers encourage production, especially of new crops, and not be an insurmountable barrier to the market?

Without adequate enforcement, this new consolidation will accomplish little to give Ontario the safe and efficient food system we want. We look forward to speedy and complete regulations that will enable this Food Safety and Quality Act to fulfill its purpose.

1640

**The Chair:** We have several minutes for questions. We can begin with the Liberal Party.

**Mr Bryant:** What do you think of the idea that's being contemplated under Bill 81, the Nutrient Management Act, whereby there would be a role for local communities to provide local enforcement or negotiated enforcement? What do you think of this idea?

**Mrs Jackson:** Spreading nutrients on fields?

**Mr Bryant:** Yes. If that idea was applied in this context, do you think that would perhaps better serve the consumer?

**Mrs Jackson:** Having recently made a trip from Tobermory to Waterloo and having to air out the car about six times on the way because of nutrients spread on the fields, I think something needs to be done. I guess I'm not sufficiently knowledgeable to say just what it should be.

**Mr Bryant:** Sure. Why don't I just move on, then? There's a delegation of administration under the act, under section 37. We wonder whether this might lead to the privatization of the cost of administering the scheme, that this might lead to slippage of standards for con-



sumers and an uneven administration across the province. Are these of some concern to your organization?

**Mrs Jackson:** Yes, they're of great concern. One of the things we hoped the bill would do would be to get more uniform standards to prevent any slippage, that it was going to be an omnibus bill. I think there is already slippage when milk is removed. I think it should be under the act.

**Mrs McLeod:** Just to follow that up, the concern is that if we take the language of what's permitted under the act and try and think of where it may go—I think our colleague mentioned it earlier, that if this becomes the privatization of the administration of food safety, and we've seen privatization on a number of fronts in the last few years, the risk to the consumer could potentially be significant. I assume from a consumer's perspective you would like to see the government continue to be the body responsible for the enforcement of food safety legislation.

**Mrs Jackson:** I think, yes. Mind you, when the government needs money, it's so easy to cut inspectors.

**Mrs McLeod:** Isn't that the dilemma?

**Mrs Jackson:** They don't show until there's a problem. So I think it's something we must all be vigilant about, whatever is done. I don't think it's a problem that will ever go away. But with the enforcement and the cost of enforcement, I would agree with what the federation of agriculture was saying, that there has to be some balance in this. If it ain't broke, if there really is no risk to health, then don't encumber the industry with a lot of useless regulations and costs to enforce them. The regulations must be very carefully written. This is why I think all of us who are commenting on this bill find it so difficult to make the right comments without seeing the regulations.

**Mrs McLeod:** That's exactly the dilemma. Hand in hand with that goes the concern you raised in the last paragraph of your presentation, that as the regulations increase in scope and as enforcement of what we hope will be good regulations increases—because there hasn't been much enforcement of existing laws now—somebody has to bear the cost. Given the cutbacks in government, as you've noted, which have hit the Ministry of Agriculture particularly hard, it leaves either consumers or producers, neither of which I sense can really bear a significant increase in cost.

**Mrs Jackson:** Yes, it may start out being the producers, but eventually it has to be the consumer or the producers don't exist. They can't stay in business if we don't pay.

**The Chair:** I'll go to the Conservative Party, briefly.

**Mr Galt:** Thank you very much for your presentation. It was quite interesting, in particular following after the soybean producers were making their comments, and your comment about a more palatable product that is superior; I think that was your word.

**Mrs Jackson:** Nutritionally superior. It's regarded that way by many. I'll sit on the fence as to whether or not it really is.

**Mr Galt:** You're getting into politics now, sitting on the fence.

**Mrs Jackson:** No, it shouldn't be politics; it's health.

**Mr Galt:** I'm teasing you.

**Mrs Jackson:** I did an MA thesis on the relation between cholesterol and atherosclerosis 50 years ago—more than 50 years ago—and the subject still isn't settled. This is why I'm sitting on the fence.

**Mr Galt:** Some people would argue, even with some of the drugs that reduce the cholesterol level, does it really help the patient in the end or not? So there's still a lot of debate about cholesterol out there, the good and the bad and so on.

The other comment you made was to better inform the consumer. I wonder today—for those who are on the Internet with computers, the information that's out there is phenomenal, and it's at our fingertips or as close as the library if we're not on the Internet and don't have our own computer. Rather than a lot of fact sheets—I appreciate your frustration when you get voice mail; you phone somebody and you don't get a live voice. Yes, it is indeed frustrating. But I'm just overwhelmed on a regular basis by the quantity of detailed information that is available if we go in and ask for it, within a minute or a half or two minutes, phenomenal quantities of information at your fingertips.

**Mrs Jackson:** I guess one of the things that worries us is the fact that good information and misinformation are all mixed up and the consumer doesn't really know. I guess if it's from a government publication, we have the hope that it's fairly good.

**Ms Courneyea:** I would like to add that economically disadvantaged consumers and many seniors do not have access to the Internet, and that's a problem.

**Mr Galt:** That's why I was kind of being careful with my comments there about the library etc. But you're absolutely right.

**The Chair:** We appreciate this presentation on behalf of the Consumers' Association of Canada. Thanks again.

#### ONTARIO FRUIT AND VEGETABLE GROWERS' ASSOCIATION

**The Chair:** Our next delegation is the Ontario Fruit and Vegetable Growers' Association. Good afternoon, gentlemen. We have 15 minutes. If we could get your names for Hansard, please, and then we can begin.

**Mr Mark Srokosz:** Good afternoon. I'm Mark Srokosz. I'm president of the Ontario Fruit and Vegetable Growers' Association.

**Mr Michael Mazur:** Michael Mazur, executive secretary of the Ontario Fruit and Vegetable Growers' Association.

**Mr Srokosz:** Thank you for allowing us to present today. We do have a discussion document, which I think you all have in front of you. I won't read through it all word for word but will just go over some of the highlights of it.

In terms of competitiveness of the industry, we understand that this legislation was put in place for the protection of public health. For economic competitiveness, since we are net importers of fruits and vegetables, we would be concerned that this standard applies to all product that is brought into Ontario and will hopefully be harmonized in terms of a national standard and even a world standard in the future, if that's the intent of this legislation.

Permits and licence holders: we're concerned as to who would require a licence, what the requirements would be cost-wise, how a permit would be issued or revoked. In terms of who holds a licence, what would they have to do to lose it?

Risks and standards development: I think we'd like to see a cost-benefit analysis done prior to the legislation being enacted in terms of the economic impact it might have on the industry. We'd hate to see it be such a huge cost to industry that it would put us at a competitive disadvantage.

In terms of record-keeping and certification, we're definitely used to some type of voluntary practices at the moment. Some companies use a HACCP-type approach that's certified through CFIA. A lot of commodities have their own voluntary on-farm food safety programs in place already. I believe CHC's on-farm food safety binder that was put together through the industry—I think there are two copies of that; unfortunately, we don't have one for each of you—is an example of the type of voluntary approach we would like to see to some of this.

1650

In the auditing procedures, we would encourage that inspectors are well trained and knowledgeable of what their role is. We would like to see them work with the producers to ensure there are appointments in the actual presence of the property owner when they are doing their inspections, that it's not something that is too overwhelming for the producer.

In terms of regulation development, we would definitely like to have consultation in terms of regulations. We would like to have some opportunity to have input into that.

With enforcement, we would encourage the need for enforcement hand in hand with education and awareness as well, not something that's a really heavy-handed approach in terms of enforcement.

In conclusion, the OFVGA endorses the need for consolidated food safety legislation in Ontario. The legislation will provide assurances to the consuming public of a safe and wholesome food supply.

This legislation must encompass all those in the food supply chain and all those who handle perishable produce. These include producers, packers, wholesalers and retailers.

It's hard for us in terms of due diligence when something leaves our hands and travels through the food chain to the consumer. Whose responsibility is it when something goes wrong in that process?

Will this legislation include all the players? If it is only targeted to food producers, then the legislation is already flawed. We believe on-farm food safety guidelines that are developed with full consultation of all stakeholders will achieve the level of success the government is looking for under this legislation. HACCP and HACCP-like processes are already meeting the needs of government.

We believe that education of all partners in the food supply chain will be more beneficial to consumers in the long run. Enforcement, strict regulations and imposed penalties will only act as a deterrent to the food industry.

We ask that you carefully consider this piece of legislation in a spirit that ensures fairness and competitiveness of the agricultural industry.

**The Chair:** Thank you. We have a couple of minutes for questions from each party.

**Mr Bisson:** First of all, I want to thank you for your brief. It's quite well put together and easy to go through, and it helps me immensely.

I have a couple of questions, starting from the back.

**Mr Srokosz:** I'd like to take credit for it, but again my credit to Michael here.

**Mr Bisson:** It's very well put together. It's easy to read, and one can clearly see where you're going.

On the last page, under "Enforcement," you're saying, "Responsibly connected individuals in a firm or corporation should bear the consequences under any prosecution process." I thought that was the case already. Is that not the case?

**Mr Mazur:** We have sometimes seen, when it comes to licence holders in terms of the federal licence—for example, in terms of fraud or those types of actions, we want to make sure that if there's a guilty party out there—

**Mr Bisson:** So not to make the licence holder responsible for an act of—

**Mr Mazur:** —the company. But the company should be responsible for the actions of its employees, and if something goes wrong and a licence is revoked and the individual wants to open for business, say, the next day, there should be something that safeguards that trust.

**Mr Bisson:** OK. That's clear.

Under "Auditing Procedures," you talk about the discretionary powers that an inspector will have, which, you say in your brief, "are unnerving to our sector." I know well of what you speak, because as an MPP I think we all get that, where we're having to deal with the aftermath of what might have been an overzealous inspector going in and throwing the book at somebody where maybe they shouldn't have, and once you've gone down that route, it's very hard to get people to back off.

Do you see the legislation, the way it's drafted so far, giving more power than you think should be given, or are you calling for that and some sort of checks and balances type of system here, an appeal process or whatever?

**Mr Srokosz:** I can't really say that we know how severe that part of the legislation will be. I think that has



to be included within the regulations more than the framework of the legislation.

I would like to see that there is—I guess the nutrient management legislation might be a fair example of how you may look at enforcing this type of legislation as well, where you have some enforcement powers in the event you can't get some compliance through awareness and education, if it gets to the point where you have to finally put the hammer down and say, "This is enough."

**Mr Bisson:** Should there be some sort of appeal process? I'm not sure if it's an appeal process. I'm using that as a word. But in the event of an overzealous inspector who may not have done things the way somebody is comfortable with, are you calling for some sort of appeal process?

**Mr Srokosz:** Under nutrient management, yes, I think we would be looking for an appeal process, and most likely in this as well. It is a little different circumstance, and if there is some kind of problem that's there, I don't know how cut and dried that becomes.

**Mr Bisson:** You say, under "risk and standards development," "These costs must be measured against the benefits to public health." How do you determine that?

**Mr Srokosz:** I guess that is the question: what is the government trying to accomplish with this piece of legislation? What is the benefit to the industry and to the general public by enacting this? If we spend so much time in the enforcement and in the operation of the legislation that the benefit back to the public isn't there within the costs, then we're not really doing the job we're supposed to be.

**Mr Bisson:** As the bill stands, should I vote for it?

**Mr Srokosz:** I don't know. That's your decision to make.

**Mr Bisson:** If you were a legislator, how would you—

**Mr Srokosz:** I think there is the need for this. I think we have to be careful of the terms, and that's why we asked to be part of the development of regulations. I really think that is the key to it, how we phase this in, how quickly we enforce strict standards on the industry through this legislation. But I believe there is a need to update the current legislation that exists around food safety.

**Mr Bisson:** Are you happy the way it is?

**Mr Srokosz:** I don't think we have any concerns with the basic framework.

**The Chair:** We'll go to the Conservative Party.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** Thank you very, Mark, for telling me how to vote on this one. I appreciate the input. By the way, Mark probably grows the best carrots in Ontario.

*Interjection.*

**Mr Beaubien:** He does have a nice garden.

In your presentation you talk about the competitive disadvantage, under your "risk and standards development." Then you talk about harmonization and then national and international imports and regulation. But then you also mention, when something goes wrong, who is responsible, who do we point the finger at? When you're

looking at trying to maintain a level of competitiveness, looking at national and international standards, where do you point the finger when something goes wrong?

**Mr Srokosz:** Do you mean, how do you enforce something on an international level? I guess that is a good question.

**Mr Beaubien:** Because there seem to be overrides with regard to—

**Mr Srokosz:** In terms of world trade and how we fit within those agreements, I don't know how we develop some kind of system that ensures that. I guess we see disadvantages and problems in terms of pesticides and the registration of them in different countries, and how those products are used and then that produce brought into this country as well. How do you set that standard? How do you get everybody to play by the rules? How do you get everybody to play by the rules in terms of farm subsidies and the levels they set?

**Mr Beaubien:** Do you see this bill as an impediment to that?

**Mr Srokosz:** If you can do that, maybe you can solve all the world's problems to some extent. I don't know.

**Mr Mazur:** Perhaps to answer your question, I don't think it's an impediment as long as we're all playing at the same level. We don't want to have a piece of legislation in this province if our competitors in our neighbouring provinces who ship product into this market aren't faced with those same challenges. I think there is a need for a national standard that puts us all on the same level playing field.

**The Chair:** The Liberal Party.

**Mrs McLeod:** I had another question, but could you just follow up on that last statement with an example of where you might open the Ontario market to offshore products that would not be on a level playing field?

**Mr Mazur:** Ontario is a net importer of fruits and vegetables, and that comes not only from other provinces but the US and offshore countries. Mark alluded to the use of pesticides. If the regulations in terms of the Canadian pesticide regulations are much more stringent on the ability of a producer to have new products available, yet we can ship those finished products, whether it's a fruit or vegetable from another country, using products that aren't available, then that puts our producers at a disadvantage. I wouldn't want to see that happen with this piece of legislation, if that tells the producer to produce and remain competitive, but yet doesn't have the same rules for somebody who is importing.

1700

**Mrs McLeod:** That relates directly to the question I wanted to ask. From a consumer's perspective, is it fair to say, setting aside genetically modified food issues for now, that the concern consumers might have about fruit and vegetable production would be the use of pesticides? If that's the primary food safety issue for a consumer, do you see regulations made under the auspices of a food safety bill as being potentially arbitrary limitations on the ability of the industry to do what's necessary for food production?

**Mr Mazur:** I'm not too sure whether the pesticide problem is a high priority on the consumer's mind these days. If you would have asked maybe five or 10 years ago, I would have said yes, but I don't know if it's as high a priority today as it was a number of years ago. It's a good question. I would find it difficult to put my head around being a consumer with trying to answer that question based on this piece of legislation.

**Mr Srokosz:** I don't think the pesticide residue issue is a food safety concern.

**Mrs McLeod:** The point of my question is, in what way do you see this bill affecting your sector?

**Mr Srokosz:** It's not as high a concern as microbial or that type of concern in terms of public health. If anything, the Canadian Cancer Society and the Heart and Stroke Foundation say that, regardless of the use of pesticides, the consumption of fresh fruits and vegetables is something that is in the public's benefit. I don't think that is the issue here. I think we just used that as an example of how things can become unfair if we don't have the same regulations or the same ability to produce as other jurisdictions.

**Mr Mazur:** I don't believe there have been any deaths associated with pesticide poisoning on fruits and vegetables, to my knowledge.

**The Chair:** Mr Bisson, do you have a very quick comment?

**Mr Bisson:** I'll do it with the next presenters, because you raised something that I think is interesting. It would take more time than I have.

**The Chair:** I wish to thank the Ontario Fruit and Vegetable Growers' Association for coming forward. We appreciate that.

#### ONTARIO PRODUCE MARKETING ASSOCIATION

**The Chair:** Our next delegation is the Ontario Produce Marketing Association. Good afternoon, sir.

**Mr Chuck Dentelbeck:** My name is Chuck Dentelbeck and I work as the executive vice-president for the Ontario Produce Marketing Association. The OPMA was founded in 1990 as a non-profit organization whose members are involved in the distribution and marketing of fresh fruits and vegetables. We have approximately 120 members and these include retailers, wholesalers, brokers, shippers, fresh-cut operators, food service, carriers and other allied industries. Besides offering a wide array of services to members, the objective of the association is to represent the views and interests of its members wherever and whenever possible.

To give you a little background about myself, prior to becoming executive vice-president of the OPMA, I was employed by the Canadian Food Inspection Agency. Some of my duties included the development, implementation, administration and coordination of the chemical residue program for produce, developing risk-based standards for food-borne pathogens on fresh cut vegetables, and assisting in the oversight of approximately 180 inspectors across Canada.

Bill 87 is going to have a major impact on the organizations marketing produce at the retail and wholesale level in Ontario. At the present there are five main areas of concern.

Historically, the marketing side of the produce industry has dealt with OMAFRA. With the introduction of Bill 87, the OPMA will begin to deal more closely with the Ministry of Health. Prior dealings with the Ministry of Health have indicated the Ministry of Health has not taken the opportunity to educate itself about the produce industry. In addition, the ministry's role in food safety inspection is delegated to the province's 37 local health units.

The Health Protection and Promotion Act provides local medical officers of health and public health inspectors with broad powers to investigate and take whatever steps are necessary to eliminate or minimize hazards to public health. Currently, a wide variation in the administration of the Health Protection and Promotion Act exists across the province.

As an industry, we do not have the administrative resources to deal with 37 health units. This, combined with proposed federal legislation, creates three levels of food safety bureaucracy. Experience with cyclospora resulted in Health Canada taking a legislative position that was different from the political position of the Toronto Board of Health and the non-constructive positions of OMAFRA and the Ministry of Health. This result—of a reactionary decision, not a science-based decision—resulted in a 10-million kilogram drop in strawberry sales between 1996 and 1997. As such, how is the Ontario government going to properly liaise with the municipalities, other provincial governments and the federal government to ensure no duplication, uniformity of program delivery, and normalization of services?

A second concern is that this is the introduction of yet another piece of food safety legislation. The CFIA has previously tabled food safety legislation and other provinces are in the process of introducing food safety legislation. The closest is Quebec. There is the possibility that different federal and provincial legislation may create legislative inequities. Considering the zeal the Ontario government is now demonstrating towards the elimination or minimization of hazards to public health, do the resources to implement such a plan and enforce the legislation in its entirety exist?

In addition, the proposed structure of reporting to two ministers has not addressed the conflict-of-interest problems between or within federal departments nor increased accountability. The optics of equity or parity and not appearing to be in a conflict of interest is an issue the provincial ministries need to examine, considering the approach taken by OMAFRA during the cyclospora outbreak, as OMAFRA has stated its role with respect to Bill 87 is "to balance its approach and role in the food safety system and improve the marketability of Ontario agri-food products." The strawberries were from California.

Third, governments at every level are eager to implement food safety legislation. Each of the proposed pieces



of legislation contains the same revenue generating concepts, licence fees and administrative monetary penalties. The produce industry has not benefited from the introduction of fees for service, as they were led to believe in 1988 at the federal level. The basic premise was that in return for licensing and inspection fees, the industry would have greater input into the administration and operation of the quality inspection program. In response, the CFIA shut down the national inspector training school and increased the responsibility of inspectors for non-produce-related programs. This is the direct result of bottom-line watching with little attention being paid to actual quality of the service being delivered. The other issue is the introduction of administrative monetary penalty systems. Consistency and transparency between governments is key.

Fourth, Bill 87 provides for the creation of food inspector positions, which is in contrast to the Ontario government's decision in 1996 to dissolve the produce inspection staff. If new inspection staff is hired, there needs to be an audit and training system in place to ensure that all individuals are qualified, performing their duties according to established protocol and that programs are delivered consistently across the province. These types of activities are usually the first to go and the last to be introduced by senior bureaucrats, as they cost money and seem to provide few tangibles in return. This is a major issue for the produce industry for two reasons: (1) as discussed under user fees for service; and (2) that problems currently exist in the Canadian and US inspection services as a result of auditing and training no longer being priorities.

Fifth, stakeholder consultation is important in the development of legislation such as Bill 87. However, holding meetings and not answering direct questions regarding implementation policies and likelihoods fits with government ability to move at glacial speed, not with industry's desire to establish truths to be able to fully support this legislation. Included in the document I handed out are two letters that were sent to OMAFRA regarding Bill 87. The first resulted in a meeting. The second resulted in most of the questions being answered. The primary objective of any type of consultation is to improve information and improve implementation. Neither of the objectives, as far as we are concerned, has been achieved.

In summary, Ontario is a geographic region where 73% of the produce consumed originates from outside the province, over 1,500 retail stores provide produce, and two national retailers account for 60% of retail sales.

The OPMA supports a Food Safety Act; however, we support one that is consistent in every manner across this country.

1710

**The Acting Chair (Mr Marcel Beaubien):** Does that complete your presentation?

**Mr Dentelbeck:** That's it.

**The Acting Chair:** Thank you very much. We have a minute and a half per caucus. I'll start with the government side.

**Mr Galt:** Thank you for the presentation. I'm going to zero in on the first bullet point. You talk about the historical work with OMAFRA and that as you move down the road or as we move into Bill 87 you see that you're going to have to be working more with the Ministry of Health and with the 37 public health agencies. I'm not sure where you're picking that up. I know in the legislation it says "minister"; that really is referring to the Minister of Agriculture, Food and Rural Affairs. It will be streamlining more of your activity with them and less with the medical officer of health. The way it's laid out, as I understand, it will be moving further into retail. Maybe you can explain to me why you're concerned or how you're interpreting that particular issue.

**Mr Dentelbeck:** Our concern comes back to the consistency and conformance and compliance in that 37 health units at present administer the Health Protection and Promotion Act the way they want in each of the 37 units. The reason I say that is that, for example, from Toronto to Mississauga and Peel the difference is that on one side of the line, one store is required to take certain measures, and another store in the same chain on the other side of the line, less than a kilometre away, doesn't have to take those measures. It's inconsistency in the application, and we feel the same thing will continue with Bill 87.

**Mrs McLeod:** My question is along the same line. Could you help me to understand the difference in terms of the role of the medical officer of health, the health unit, under Bill 87 from what it currently is; how you see that as a more pervasive role and more responsibility for the public health units.

**Mr Dentelbeck:** It comes back to the cyclospora example. Health Canada took a position that was legislated according to the Food and Drugs Act, which was different from what Ontario wanted to take, and it comes back to there was no legislative position to take that action. That's the way we felt and that's the way we still feel, that one act overrides because this stuff is imported and therefore the Food and Drugs Act should have taken precedence. We just have concern that the Ministry of Health is going to do what they want. We got into a political situation where the Toronto Board of Health wanted something and pressured the other boards of health around it to take a position, which we felt the federal government was addressing through their implementation of on-farm food safety programs in Guatemala.

**Mrs McLeod:** But I wanted to get a better understanding of the on-the-ground inspection role. The Ministry of Health, provincially and through the local officers of health, would be primarily involved on the ground in tracing back sources of food contamination. Is that not almost the limitation of their role under Bill 87?

**Mr Dentelbeck:** No. They would be involved in all the—we don't know what the regs are going to say at the present time. Toronto has its retail establishments and they have their requirements. Inspectors go out and follow that decision they've made in terms of how we're going to enforce the Health Protection and Promotion

Act, and the rest of the province isn't taking that same action. We have inconsistency in application.

**Mr Bisson:** I want to go to your last point where you say, "However, we support one that is consistent in every manner across this country" when it comes to a Food Safety Act. It brings me to this point. Basically, what you say also goes back to the previous presentation, that if a producer in Ontario is made to meet a certain standard and is trying to sell goods into the Ontario market having to meet that standard, but the person you're competing with—an American producer, a Quebec producer, an offshore producer—is able to sell that produce here not having met that standard, it puts you in a bad competitive position.

Therefore, are we coming at this backwards? Should we be trying to, let's say, regulate the standard of the product rather than trying to regulate the producer? Whatever the product is, be it milk, carrots, whatever, you say, "Here is the standard of the product we want Ontario consumers being exposed to. You're the producer and you are going to have to sell to that standard." It means that if somebody's bringing stuff in from Chile, the United States, Quebec or Ontario, it's all the same. "You either meet our standard or you don't sell your produce in our market," and let the bloody market decide what's going to happen after. Is this whole thing backwards?

**Mr Dentelbeck:** We're going to have CCGD speak, and that's the decision the retailers I deal with are now moving toward. They say, "I want this stuff and you have to have these requirements."

**Mr Bisson:** You see, the problem I have is that we do this to ourselves. Legislators come in and decide that we need to apply standards to an industry, for the good reasons. Nobody argues that the government's intent is wrong. But as I've learned from experience, being here now for three terms, we often end up creating a bigger problem down the road that people have to live with, and that is, at the end of the day what have you bought?

Sitting here as a legislator, I'm saying maybe we're coming at this the wrong way. Maybe we should be talking about trying to regulate the product. At least that way you're all competing on the same level playing field. If I'm trying to sell milk in Ontario, it has to meet a certain standard. I don't give a darn where you get it from. Hopefully it's local; I hope that's where we're trying to get most of it. But at least you're on the same level playing field as Americans, Quebecers, Manitobans, Chileans, or wherever it might come from.

**Mr Dentelbeck:** That's the way we've been moving at the retail and wholesale level.

**Mr Bisson:** Practical ideas from the NDP. That's all you'll ever hear from us. It's the new New Democratic Party.

**The Acting Chair:** With that—and I'm not going to comment on that—we've run out of time. On behalf of the committee, thank you very much for your presentation.

## CANADIAN COUNCIL OF GROCERY DISTRIBUTORS

**The Acting Chair:** Our next presentation this afternoon is from the Canadian Council of Grocery Distributors. I would ask the presenter to come forward and state your name for the record, please. You have 15 minutes for your presentation.

**Mr Justin Sherwood:** Thank you. My name is Justin Sherwood. I'm the vice-president of food service and Ontario public policy for the Canadian Council of Grocery Distributors. I'd like to thank the committee for providing me with the opportunity to comment on Bill 87.

The Canadian Council of Grocery Distributors is a not-for-profit national trade association that represents the interests of grocery wholesalers, foodservice distributors and retailers. Among our members are small and large companies. In Ontario, we represent approximately \$19 billion worth of sales, operate or supply over 7,000 retail locations, and employ 150,000 people. Our retail membership in Ontario includes A&P/Dominion, A. de la Chevrotière, Canada Safeway, Lanzarotta Wholesale Grocers, Loblaw Company Ltd/National Grocers, Metro Inc, Sobeys, the Kitchen Table, Whole Foods and all the subsidiaries of those companies. Our foodservice members include Flanagan Foodservice, Gordon Food Service, Neate Roller, SERCA Foodservice, Summit Foodservice, and Sysco Food Services of Ontario. Together, that represents approximately 85% of the food product distributed in Ontario.

As the primary distributors of food to consumers and to foodservice operators in the province of Ontario, food safety and food quality are of paramount importance to CCGD members. CCGD and its members are supportive of Bill 87 and its goal to modernize Ontario food safety and quality systems. However, we have a number of concerns with the bill as it's currently drafted and would like to take this opportunity to cover off two key issues. There are a few more included within the submission document, which you can review at your leisure.

The first issue is the issue of jurisdictional overlap. I understand from the previous presentation that it's one that probably has been raised quite a few times today. Under the existing system in Ontario, food safety and food quality regulations are maintained and enforced by the federal government, the federal agencies, provincial ministries—two in particular, OMAFRA and the Ministry of Health and Long-Term Care—and 37 municipal health units. In addition, provincially the Health Protection and Promotion Act and regulation 562, the food premises regulation, both administered by the Ministry of Health and Long-Term Care, outline the requirements for food safety for the food retail and foodservice industries.

Bill 87, parts II and III, provide OMAFRA with the ability to require licensing or impose standards on a broad range of activities, specifically as they apply to any regulatable activities. I won't bore you with what that list is, but suffice to say that it covers just about every single



activity within the food supply chain, short of actually eating the product.

1720

Instead of clarifying roles and responsibilities for food safety and quality, and streamlining jurisdictional responsibility, which were both stated objectives during early consultation on the bill, the bill has the potential to introduce another layer of legislation and regulation. Due to the broad range of regulatable activities and the fact that the bill covers a number of activities already regulated by other layers of government, the bill provides for the creation of tremendous overlap, added bureaucracy and inefficiency. Given this potential, we would request that the bill be amended to limit regulatable activities to those areas where there is not already a defined federal or provincial interest and/or legislation.

The other issue I wanted to speak to you about today is the licensing requirements. Part II of the bill provides the government with the ability, through regulation, to require a licence for a licensed activity, and then it further goes on to define a licensed activity as potentially any of the regulatable activities—and that's a rather long list of activities. From a food distribution perspective, this broad power raises three key concerns.

The first is the potential for proliferation of licences for the procurement, storage, distribution, transportation, display and retailing of food. As an extreme example, under this legislation the government could require a self-distributing retailer—that's a retailer that does its own wholesaling, distribution and storage—to require multiple food safety licences for one continuous activity.

Secondly, under this provision, licensing could be used as a mechanism for revenue generation to fund food safety and quality activities, and that's a concern for our membership.

Thirdly, given that retailers and wholesalers are already required to hold a wide variety of business-related licences and are subject already to various levels of inspection, these provisions could result in double licensing and double inspection for the same activity by different jurisdictions.

We would therefore request that Bill 87 be amended so that OMAFRA's power to license be limited to activities and facilities where there is already not a defined federal and provincial interest; and secondly, to limit the potential for licence proliferation and utilization of licensing as a means for revenue generation by incorporating a one business/one food safety licence provision within the bill.

That is the extent of my presentation. I'd be happy to take any questions.

**The Acting Chair:** We have approximately a minute and a half per caucus. I'll start with Mrs McLeod.

**Mrs McLeod:** Thank you very much. I appreciate the fact that you've presented a couple of very specific amendment areas that would start to deal with the whole issue of overlap of jurisdictions and potential duplication. I appreciate as well the fact that you've identified a concern about at least the potential for double licensing

and for proliferation of licensing. That might not ever be the intent of any government, but just the way the legislation is set out, it could almost happen inadvertently.

The amendment you propose, it intuitively seems to me, would make a lot of sense. I guess, since you proposed it, it's not so much a question to you as it might be a question to the government: why not make it specific in the legislation that these areas of duplication are to be avoided by saying this act would only prevail in areas where there isn't currently legislative jurisdiction? Mr Chair, I might simply turn the question over for response to the government and the parliamentary assistant.

**Mr Galt:** Agreed. No objections.

**Mrs McLeod:** So those amendments will be proposed by the government then?

**Mr Galt:** Our government has always stood for getting away from duplication. There may be some need here for consistency, but as far as duplication is concerned, we've always stood for eliminating duplication and red tape.

**Mrs McLeod:** So I'll look forward to those amendments being tabled by the government and we won't need to do that for you?

**Mr Galt:** Well, we'll look forward to consistency within this and getting rid of as much duplication as we possibly can. What he's presenting to us—certainly we do not want that kind of duplication in there.

**Mrs McLeod:** May I assume, Mr Chair, that at least the government will take back these amendment proposals for consideration of potential tabling with the committee?

**The Acting Chair:** Mrs McLeod, I will take it, as acting Chair of the committee, that Mr Galt is more than willing to take the issue and discuss it with the ministry and the people responsible. As to where it goes, I'm sure Mr Galt is not the final decision-maker but I'm sure he has undertaken to at least discuss it. With that, I go to Mr Bisson.

**Mr Bisson:** Give me an example of double licensing. I know where you're going, but are there particular areas you're worried about?

**Mr Sherwood:** Let's just use retail operation as an example. Right now we are inspected by various municipalities. Potentially under this bill—and I'm only speaking of potentials—OMAFRA could decide that they would like to inspect our produce areas within our retail locations, and therefore there would be double inspection, and they could require it as a licence.

**Mr Bisson:** And that's why you're making the recommendation for amendment that there not be the double whammy of having the municipality or the federal or provincial government doing the same thing?

**Mr Sherwood:** Exactly.

**Mr Bisson:** I hear you.

The other issue—and it's something we've not asked but it has been on the minds of a lot of people. To a certain extent, you're saying that under the provisions,

licensing could be used as a mechanism for revenue generation. Is there a fear of that, considering the current track record?

**Mr Sherwood:** There's always a fear, when there's any licensing potential introduced, that it will be used as a means of revenue generation—always.

**Mr Bisson:** A quick question. I made a comment earlier about trying to regulate the actual product rather than the producer. You're in the business. I'm just wondering what you'd say on that.

**Mr Sherwood:** It certainly has been looked at more than once. From a procurement perspective, a number of our members certainly take a look at quality standards for products, and that's the best way.

**The Acting Chair:** We'll go to the government side.

**Mr Galt:** I don't have any questions. It was an excellent presentation. We appreciate it.

**The Acting Chair:** Anyone else for questions? OK, then on behalf of the committee, thank you very much for your presentation this afternoon.

**Mrs McLeod:** Chair, may I just ask, is there a vote tonight at 10 to 6?

**The Acting Chair:** Yes, there is.

**Mrs McLeod:** I'm just concerned about whether or not we're going to have adequate time for the last two presenters.

**The Acting Chair:** I think we're running a few minutes ahead, so we'll try.

**Mrs McLeod:** I would certainly support some amendment in the time frame so we can be sure to hear from both of our last presenters.

**The Acting Chair:** OK. We will divide the rest of the time between the two.

**Mr Bisson:** Do you want it in the form of a motion?

**The Acting Chair:** Do I have unanimous consent to do that? OK.

**Mr Bisson:** Just so people understand what we're talking about, we need to be in the House for a vote at 10 to the hour. We don't want to leave the last presenter with, "Oh, we have to leave."

**The Acting Chair:** So we'll cut down the time to about 12 minutes.

#### EWENITY CO-OP

**The Acting Chair:** I would ask the next presenter, the Ewenity Co-op, to step forward and state your name for the record, please. You have approximately 12 minutes.

**Ms Elizabeth Bzikot:** OK. My name is Elizabeth Bzikot and I'm representing the Ewenity Dairy Co-operative, a producer co-operative for sheep milk farmers. I do believe, however, that other sheep milk producers will have views similar to those expressed by me. Thank you for the opportunity to voice our concerns about Bill 87 and the present definition of milk. That is our problem: the definition of milk. I am approaching the situation from a different angle than that of my colleague, Larry Kupecz, an ODSA director, but my conclusion will be the same.

I'll start by giving you a brief introduction to the sheep dairy industry and explain the importance of the definition of milk to our industry.

Over two million kilos of sheep milk cheese are imported into Canada annually. This represents the annual production of roughly 50,000 ewes. At present, here in Ontario we milk approximately 5% of this number, so you see there's considerable room for import substitution.

In Canada, the sheep milk industry is in its infancy. The first dairy sheep were imported no more than 10 years ago. As a farming sector in its early days, we do not yet have a well established base, either as producers, processors or consumers. We are, as yet, very fragile.

However, sheep milk farming is eminently suited to the small dairy farm. With a relatively low investment and a small land base, a family can earn a good income without the help of government subsidies. It is one of the very few areas in agriculture where expansion is possible, where the industry is upwardly mobile. In fact, it is one of the few sectors of agriculture which can expand. It can provide family farms with a good income without resorting to expensive technology or environmentally damaging methods or both. It's another way of improving the earning capacity of the rural areas and thereby ensuring the continuation of our rural economies. Here we have the opportunity of exploiting a niche for high-priced products: alternatives for those with a variety of food allergies, lovers of gourmet cheeses, and for those Canadians for whom milk traditionally came from sheep.

Furthermore, certain products which are not internationally traded could now be produced and made available here in Ontario—I am thinking of sheep milk in liquid form or sheep milk yogourt—enabling more producers, processors and consumers to benefit from this specialty product industry.

#### 1730

Now we come to the definition of milk. As you know, the Milk Act currently defines milk as cow's milk. A consumer, on learning this definition, will assume that sheep milk and products thereof are in some way unsafe or inferior. They will approach sheep milk products with hesitation and misgivings. In an industry as young and vulnerable as ours, this definition can only have a negative impact. Yet sheep milk is every bit as healthy, wholesome and safe as other milks and, for some consumers, has advantages. As you can see, it is vital for the growth of our sector for sheep milk to be included under the Milk Act and for the wording of the definition of milk to be changed to "milk from mammalian species."

Finally, we fear that if milk from different species is handled under different legislation, this could not only cause confusion for the consumer but also misunderstandings among producers of these various milks. If, for example, regulations for cow and sheep milk vary under the two different acts, confusion could arise as to the correct procedure to follow. In such cases, the weaker—and that would be us, the sheep milk producers—are the ones who would defer to the stronger, and we would



suffer. The current definition of milk is an unnecessary potential impediment to the expansion of our market and can only result in disadvantages to all concerned groups.

My main point is that here we have an industry which is capable of expansion. It could result in increased income, without disadvantages to the rest of the economy, for several hundred, if not thousand, farmers. The definition of milk does play a role here, and if milks are considered different milks under the legislation—I know that in fact the legislation would probably, as we have been promised, treat us very similarly. But if it is viewed in the eyes of the consumer as something different, as different milks with different attributes, possibly negative ones, this will not help us, and we're not at a stage where we can fight it. We're right at the beginning. Thank you.

**The Acting Chair:** Mr Bisson, we have approximately a minute and a half per caucus.

**Mr Bisson:** I just want to ask a question of the parliamentary assistant. We've now heard a number of presentations on this very point. Are you prepared to introduce an amendment or do we need to bring one in to make sure that we treat all milks the same? We haven't clearly heard where you're going as a government on this. Otherwise, we'll have to bring an amendment forward.

**Mr Galt:** As I see what's happening here, we're treating all milk the same but recognizing milk from dairy cows as separate from a marketing point of view. As pointed out here by the presenter, it's a perception; the concern is the perception rather than how it's being treated.

**Ms Bzikot:** But in the eyes of the consumer, that is most important. For our market to expand, it is important that there is not a difference in perception.

**Mr Bisson:** So I take it that we need to bring an amendment; that's what I heard. You're saying you're not comfortable with where it stands now and you need to have some clarification in the legislation that says all milks are treated the same.

**Ms Bzikot:** Yes, that everybody knows milk is milk is milk.

**Mr Bisson:** That's as clear as milk.

**The Acting Chair:** The government side, any questions?

**Mr Galt:** I was just going to comment on the perception, and I already have done that.

**Mrs McLeod:** I think I understand the concern around the consumer perceiving that because your products are not under the Milk Act, therefore there is something that's not quite—

**Ms Bzikot:** Would you not agree with me?

**Mrs McLeod:** I would agree with you. What I don't understand is why there's a problem in including you under the Milk Act. I hear the government say it's because the Milk Act deals with marketing issues as well as with food and safety, yet the earlier presentation from the association—I mean, you don't want to be under a marketing system. It's a new product, essentially; you

want to be able to expand. You don't want, I assume, to be caught up in a marketing system.

**Ms Bzikot:** The quotas would not apply to us and the marketing system would not apply.

**Mrs McLeod:** Even under the Milk Act, so it's not that you'd automatically be caught up in that. So what's the problem? I really don't understand why it's an issue. The government seems determined not to deal with it. This doesn't seem to be a drafting error. I guess the question comes back to the government. We can bring forward the amendment, but if the government has dug in, it's not going to get passed. So again to the parliamentary assistant, the marketing argument doesn't fly. They're not looking to be part of a marketing system.

**Mr Galt:** If I may, Chair, to the official opposition's comment, it's all tied together, the marketing and the cow's milk activity and being looked after, so it's being left as a separate act. These are other milks we're referring to. As far as dealing with it and health and quality and safety and all the rest, it will be dealt with in a very similar manner.

**Mrs McLeod:** Can you not bring in other milk products from non-cow milk and just indicate that the marketing provisions apply only to cow's milk? Why would that be a difficult legislative drafting?

**Mr Galt:** It has to do with the marketing, and that's the position that we're in at this point in time.

**Mrs McLeod:** But it doesn't make sense.

**Mr Bisson:** Maybe this will be helpful. This is a question to the legislative research. Is there a difficulty in drafting the type of amendment we're proposing? Can it be done? You should have been paying attention.

**Mr Avrum Fenson:** No, I know what you're asking. I'd rather not answer off the top of my head. I can take a look and provide the committee with some more alternatives.

**Mr Bisson:** Can I ask that you give the committee something in writing, if possible tomorrow, as to what can be done in terms of legislating an amendment and what difficulties it might—I mean, is there an argument? I don't hear one, and I'm having the same problem as my colleague here in understanding where the government's going on this. Would such an amendment be a problem if you were to exclude the marketing aspect? Could it be done?

**The Chair:** On that question, we should conclude. I wish to thank you for coming forward.

#### ALGOMA DAIRY PRODUCER COMMITTEE

**The Chair:** Our final presenter is from Algoma Dairy Producers. Good afternoon, sir. I'd ask for your name for Hansard.

**Mr John Hawdon:** First, I'd just like to thank you for being here. I apologize that I don't have extra copies; computers and printers act up when you need them the most.

My name is John Hawdon. I'm the chair of the Algoma Dairy Producer Committee. My brother and I

own and operate a 60-cow dairy farm on St Joseph Island, approximately 45 miles east of Sault Ste Marie. Right about now, my brother is finishing the evening milking. I'd be more comfortable doing his job than what I'm doing right now, but I feel this hearing is very important to our future, so here I am.

I represent 17 dairy farms in the district of Algoma. During the last dairy year, ending July 31, 2001, we marketed just over 7 million litres of milk from these 17 farms. These farms would have grossed slightly more than \$4 million from milk sales. This is revenue that ultimately funnels back to the many suppliers of goods and services in the rural communities within the district.

Any negative impact associated with the dairy industry in the north can and does have a devastating effect on the economy of the area and the rural communities that we are striving so hard to maintain. Even if we lose one or two farms in the district as a result of the impact of this bill, it puts further pressure on all the suppliers of goods and services to our farms. We are dangerously close to not having enough critical mass to support the services of milking equipment suppliers, veterinarians, feed suppliers, and the list goes on. I cannot stress enough that anything that might negatively impact our industry in the north is of utmost importance to us.

Algoma dairy farmers have a long-standing commitment to producing milk of the highest quality possible and are supportive of efforts to build on the excellent reputation that the Ontario dairy industry enjoys for its efforts on improving milk quality. Last year, 41% of our producers achieved a general certificate under the 2000 Milk Quality Recognition Awards program. This compared to the provincial average of just under 30%.

We also recognize the importance of food safety in today's environment and take steps to ensure that the milk we produce and market is safe for consumers of our products. Of particular importance is the need to identify any cows that are treated with an antibiotic so that we as farmers can ensure that milk from these animals is withheld from the marketplace for the required time period. While no producer can afford the penalties associated with offences under the quality penalty program, they do serve as a strong deterrent to ensure that we pay attention to the use of antibiotics.

1740

The current raw milk quality program in place in Ontario consists of regular farm inspections, as well as a quality penalty program applied to those who are in violation of meeting the quality standards. In addition, the milk quality recognition awards program recognizes those producers who, on an annual basis, significantly exceed the minimum quality standards. Within Ontario, we will also soon be a part of a formalized quality assurance program based on hazard analysis critical control point principles, or, as it is commonly known, HACCP. Details of the QA program were reviewed with dairy producer committees at DFO's recent fall conference. The new program consists of four main components, namely, installing time-temperature recorders, defining

and posting standard operating procedures, completing a livestock medicines course, and regular water testing.

This background is provided to impress upon this committee that we, as grassroots dairy farmers, are extremely supportive of food safety and quality standards to protect the reputation and integrity of milk and milk products.

Bill 87: The main concern we have in regard to Bill 87 is the proposed intention to repeal the Edible Oil Products Act as part of this new act. The Edible Oil Products Act currently prohibits the blending of dairy products and non-dairy products—edible oil products—and restricts how edible oil products are marketed and displayed in stores.

We believe that repealing this act would create a vacuum in regulations protecting the identity of dairy products, have a negative impact on our industry and lead to confusion among consumers. There is a need for more uniform national standards on nomenclature and labelling for both dairy and imitation dairy products. Further details on this matter will be provided in presentations to this committee by our provincial and national organizations.

As a grassroots dairy farmer, I have a deep concern about any action that the government would take that threatens the viability of my farm and my industry. Even OMAFRA staff have acknowledged that there could be a negative impact on the dairy industry. To those of us who farm in the northern part of this province, any negative impact on our industry is unacceptable. Dairy farming is one of very few viable options for agriculture in northern Ontario. As already mentioned, any reduction in the market for milk and dairy products places increased stress on the ability to maintain any dairy farming in the north. While our counterparts in dairy areas in other parts of the province are able to choose from at least half a dozen milking equipment dealers, veterinarians, feed, fertilizer and seed suppliers, we do not have that luxury.

In Algoma we have one feed company, one large-animal veterinary clinic, one dairy equipment supplier and, as of December 1, one tractor dealership. Our next-closest dealer is in Sudbury, which is three hours from us. Much of our equipment technical data and parts ordering is done by long-distance phone calls. Many times a Michigan dealer would be closer, but the dollar exchange makes that expensive. Purchased feeds, seeds and fertilizers cost us an extra \$30 to \$50 per tonne for transportation.

In conclusion, dairy farmers across this province are committed to addressing food safety and quality issues. We recognize that we have a responsibility to provide food which is safe, nutritious and of the very best quality possible. This message was driven home to those of us who attended the recent DFO fall conference at Geneva Park, when we heard from Alan Grant, the director of quality assurance and food safety for Sobeys. He provided first-hand information to us on what his company expects from those throughout the supply chain. We take that responsibility seriously. We have been a leader in



food safety and quality matters and will continue to do so as we proceed to implement a quality assurance program based on HACCP principles. We applaud the government for its efforts in bringing forth the Food Safety and Quality Act to do for all of agriculture what we have in many respects already been doing in the dairy sector.

However, we take exception to the repeal of the Edible Oil Products Act being tied to the Food Safety and Quality Act. It is an issue that does not directly relate to food safety and, in our view, does not need to be repealed as part of this new act. Our provincial organization, Dairy Farmers of Ontario, believes there are ways to deal with the matter, but not within the context of Bill 87. You will be provided with that perspective later in a presentation from Dairy Farmers of Ontario.

I thank you for affording me the opportunity to come to the committee and wish to leave you with the message that we are deeply concerned in the north about any actions that could negatively impact on the size of our industry.

**The Chair:** Thank you, sir. Mr Bisson, you—

**Mr Bisson:** I'm called to the House by the whip.

**The Chair:** Yes, you have to vacate.

**Mr Hawdon:** I tried to hurry.

**Mr Bisson:** You tried; we were whipped.

**The Chair:** I'll go to the Conservative Party. Any comments?

**Mr Beaubien:** I don't really have a question but I certainly have a comment. I certainly agree with you on your concern concerning the critical mass in the dairy industry, and I'm sure it's not only with the dairy industry. I come from rural Ontario and I think we have some similar problems. Hopefully, whenever any government bill or policy is introduced, we become sensitive to that. I may somewhat disagree with you with regard to your position on the milk, as opposed to soya milk or

whatever, but your issue with regard to critical mass and your concern is very valid and I think it's shared by many of the members in this House. I wish you good luck.

**Mrs McLeod:** Coming from northern Ontario, I'm fully aware of the fact that you don't have enough volume of business to lose any portion of that and still survive as an industry. I think that self-sufficiency in food happens to be a very important national goal. It's also important that we have some independence of food in northern Ontario in terms of quality of access to food. So I'm concerned when you say that the repeal of the edible oils act presents a significant threat to the viability of the dairy industry in northern Ontario. I wonder if you could tell me who you think the competition would be on the grocery shelves and what percentage of the market that might take. Part of the question I was trying to get at earlier is, to what extent would it even be non-Ontario industry that is the competition in blended products?

**Mr Hawdon:** I don't know all those facts. DFO can give you more information on that.

**Mrs McLeod:** For you, it's any additional competition, whether it's Ontario soybean producers or whoever, that anybody who can come in with a blended product is going to take away a portion of the market share, which could do in the dairy farmers in the north?

**Mr Hawdon:** We feel we have a good product, and why should somebody else ride on our shirt-tails? That's my impression.

**The Chair:** I wish to thank you, sir. On behalf of the committee, we appreciate your presentation from the Algoma Dairy Producers.

**Mr Hawdon:** Thank you.

**The Chair:** I see no other business on the agenda. This meeting is adjourned.

*The committee adjourned at 1747.*







## **STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY**

### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

### **Substitutions / Membres remplaçants**

Mr Gilles Bisson (Timmins-James Bay / -Timmins-Baie James ND)

Mr Doug Galt (Northumberland PC)

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale PC)

Mr Bob Wood (London West / -Ouest PC)

### **Clerk / Greffier**

Mr Tom Prins

### **Staff / Personnel**

Mr Avrum Fenson, research officer,  
Research and Information Services



## CONTENTS

Monday 19 November 2001

<b>Food Safety and Quality Act, 2001, Bill 87, <i>Mr Coburn</i> / <b>Loi de 2001 sur la qualité et la salubrité des aliments</b>, projet de loi 87, <i>M. Coburn</i> .....</b>	<b>J-603</b>
Ontario Dairy Sheep Association.....	J-605
Mr Larry Kupecz	
Ontario Federation of Agriculture.....	J-607
Mr Jack Wilkinson	
Mr Neil Currie	
Ontario Soybean Growers .....	J-610
Mr René Petroski	
Consumers' Association of Canada, Ontario division.....	J-612
Ms Theresa Courneyea	
Mrs Ruth Jackson	
Ontario Fruit and Vegetable Growers' Association.....	J-614
Mr Mark Srokosz	
Mr Michael Mazur	
Ontario Produce Marketing Association .....	J-617
Mr Chuck Dentelbeck	
Canadian Council of Grocery Distributors.....	J-619
Mr Justin Sherwood	
Ewenity Co-op.....	J-621
Ms Elizabeth Bzikot	
Algoma Dairy Producer Committee.....	J-622
Mr John Hawdon	

CA2 CN  
XC 14  
-577

J-26



J-26

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 20 November 2001

# Journal des débats (Hansard)

Mardi 20 novembre 2001

**Standing committee on  
justice and social policy**

Food Safety  
and Quality Act, 2001

**Comité permanent de la  
justice et des affaires sociales**

Loi de 2001 sur la qualité  
et la salubrité des aliments

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Tuesday 20 November 2001

Mardi 20 novembre 2001

*The committee met at 1546 in room 151.*FOOD SAFETY  
AND QUALITY ACT, 2001LOI DE 2001 SUR LA QUALITÉ  
ET LA SALUBRITÉ DES ALIMENTS

Consideration of Bill 87, An Act to regulate food quality and safety and to make complementary amendments and repeals to other Acts / Projet de loi 87, Loi visant à réglementer la qualité et la salubrité des aliments, à apporter des modifications complémentaires à d'autres lois et à en abroger d'autres.

**The Chair (Mr Toby Barrett):** Good afternoon, everyone. Welcome to this regular meeting of the standing committee on justice and social policy for November 20. If you were wondering, we had to wait for the conclusion of routine proceedings in the Legislature. We are conducting the second day of two days of hearings on Bill 87, An Act to regulate food quality and safety and to make complementary amendments and repeals to other Acts.

## UNILEVER CANADA LTD

**The Chair:** I wish to call forward our first delegation, Unilever Canada Ltd. Good afternoon, everyone. We have 15 minutes. I wonder if you could give us your names for the purposes of Hansard.

**Mr Sean McPhee:** Good afternoon. I'm Sean McPhee of Sean McPhee and Associates, representing Unilever Canada. With me today are Bruce Mactaggart, vice-president of Unilever Canada, and Jan Mollenhauer, director of marketing.

Unilever Canada, a subsidiary of Unilever PLC, is a diversified consumer products company headquartered in Toronto. Unilever's Canadian interests include foods, food service, ice cream, home and personal care, and cosmetics. In 2000, Unilever Canada had annual sales of \$1.4 billion and employed 3,300 people across Canada. The bulk of Unilever Canada's operations are in Ontario, including facilities in Oakville, London, Simcoe, Woodbridge, Rexdale, Toronto, Richmond Hill, Brampton, Peterborough and Belleville.

In Canada, Unilever is best known by brands such as Lipton, Red Rose Tea, Breyer's, Popsicle, Bertolli olive oil, Sunlight, Vaseline and Dove. Leading margarine

brands manufactured in Unilever's Rexdale, Ontario, facility include becel, Imperial, Blue Bonnet and Fleischmann's.

Unilever Canada supports the repeal of the Edible Oil Products Act, an act which is discriminatory and protectionist and stands in the way of consumer choice. In 1994, Ontario and other Canadian governments signed the agreement on internal trade, which came into force in July 1995. Edible oil products and imitation dairy products were included in the scope and coverage of the agreement on internal trade effective September 1, 1997. As such, the Edible Oil Products Act, which restricts the movement of edible oil products into Ontario, creates an obstacle to internal trade and therefore violates the agreement on internal trade.

Furthermore, last year the Federal/Provincial/Territorial Agri-Food Inspection Committee recommended that "provinces should deregulate products that imitate or resemble dairy products, whether or not they contain dairy ingredients, and defer to existing federal regulatory processes that address the consumer information and fraud issues." The province of Ontario consulted with stakeholders on this recommendation, and the Ontario Soybean Growers as well as the Edible Oil Foods Association of Canada responded favourably.

Apart from the obligation to repeal due to Ontario's trade commitments, consumers in Ontario and Canada have expressed an interest in alternatives to dairy products for cultural, medical, religious and health reasons.

Opening up the market to blends will lead to new consumer and food service products that borrow the best qualities from dairy and edible oil products. The result will be new market opportunities for both dairy and edible oil producers. For example, by blending butter with edible oil, the resulting product will deliver the taste desired by many consumers and the texture desired by industrial bakers, but it will have a lower level of saturated fat than today's consumers demand. In other jurisdictions, for example, Unilever markets Brummel and Brown, a margarine and yogourt blend, which is a spread low in saturated fat offering a unique taste experience.

These products also represent new market opportunities for Ontario's soybean and canola growers. It is important to note that Canadian canola and Ontario soybeans are the main ingredients in Canadian margarine and would be the principal edible oil ingredients in new blended products.



The edible oils industry makes a significant contribution to the Canadian economy, accounting for \$570 million in total sales and employing approximately 11,000 people. The margarine industry accounts for just over half of the total edible oils market, with total sales of \$308 million, and employs approximately 6,000 people.

The majority of all economic activity related to the margarine industry in Canada occurs in the province of Ontario. The majority of soybeans used in margarine for the Canadian market are grown in Ontario. More than 70% of all soybeans grown in Canada for all uses are crushed in Ontario. More than 90% of all members of the Edible Oil Foods Association of Canada have their processing facilities in Ontario. More than 85% of branded margarine produced for the Canadian market is indeed manufactured in Ontario.

Based on the market share in other jurisdictions—blends have 3% of the global dairy and edible oil market—the immediate market potential for blends in Canada in terms of direct sales is \$226 million, including both retail and food service sales, with the corresponding direct employment of 2,200 new jobs, the majority of which will be created in Ontario. In Ontario alone, we estimate total direct sales potential for the blends market at \$66 million.

In addition to the creation of a third market for edible-oil/dairy blends, repeal of the act will create a market for dairy ingredients demanded by edible oil food producers who are developing blended products. With innovation and consumer education over time, it is estimated that the market for blends in Ontario and Canada could grow to 5% to 10% and would more than offset an estimated initial 3% to 4% loss of market share for dairy products.

In addition, Ontario companies which develop unique dairy and edible oil blended products for the Canadian market will now benefit from national economies of scale that will provide a basis to seize export opportunities in other markets such as the United States.

Other indirect economic benefits include investment in new technologies by Ontario companies to produce innovative blend products, with attendant multiplier effects in related industries such as equipment suppliers, packaging, marketing etc.

In addition to these economic benefits, numerous studies have demonstrated the health benefits of lowering the level of saturated fat derived from animal sources in the diet and substituting plant-based unsaturated fats. More than 40% of Canadians are believed to have elevated cholesterol levels. Almost one half of Canadian adults on a diet do so because of concerns about elevated cholesterol. On a population basis, lower levels of saturated fat in the diet have been conclusively linked to lower levels of cardiovascular disease. The benefits to individuals of reducing saturated fat in their diets are obvious in terms of personal health. In addition, Canadian society as a whole stands to benefit in terms of reduced health care costs and strain on the health care system due to reduced incidence of heart disease.

I want to say directly that the claims of a significant loss of market share for dairy products as a result of the act's repeal are unfounded. There is no evidence from any jurisdiction to substantiate such claims. Consumers are simply not going to walk away from such staples as cheese, butter and milk. Such claims of significant market share loss were made in December 1994, when the government of Ontario announced its intention to repeal the Oleomargarine Act, which required margarine to be a different colour than butter. In fact, butter sales remained unchanged in 1995 from 1994, at about 42 million pounds. That's A.C. Nielsen data. Conversely, and interestingly, butter sales in the province of Quebec, where margarine must be coloured white, declined by about 6% in 1995 over 1994.

Current federal and provincial legislation provides the framework to ensure that consumers will be able to tell the difference between a dairy product, an edible oil product and a blended dairy-edible oil product. The labeling and advertising of blended products are regulated in the same manner as any other unstandardized food product. Section 5 of the Food and Drugs Act prohibits selling or advertising any food in a manner that is false, misleading or deceptive.

Other federal and provincial laws, including the federal Competition Act and Consumer Packaging and Labelling Act and certain provincial business practice and consumer protection laws, prohibit misleading or deceptive advertising and labeling and would prohibit, for example, the labeling or advertising of edible oil products in a way which would suggest to consumers that the products are in fact dairy products.

Additional principles to ensure clear communication with consumers are as follows: neither product should purport to be a substitute or imitation of the other; all food products shall declare all ingredients; the name of either product should be distinct and not imply it is a substitute for the other; blends of two or more distinct products should have unique names, yet clearly indicate the nature and proportion of the contributing products.

In conclusion, in addition to meeting Ontario's trade commitments under the agreement on internal trade, the repeal of the Edible Oil Products Act will lead to the introduction of a greater array of healthy products, provide Ontario consumers with product selection choices enjoyed by the majority of North Americans, and provide direct benefits to the Ontario edible oil industry and indirect benefits to canola and Ontario soybean growers.

Unilever Canada applauds the Ontario government for its initiative to repeal the Edible Oil Products Act as part of Bill 87.

Thank you. We'd be happy to take any questions.

**The Chair:** Thank you, Mr McPhee. We have a little over a minute for each party for questions or comments. We'll begin with the Liberal Party.

**Mr Steve Peters (Elgin-Middlesex-London):** I just want to make the comment that I'd like to see some substantiation of some of the numbers, because certainly

some of the comments I've seen from the dairy industry are that their market share losses could be substantially higher than 3%; they're looking more at a 10% potential there.

The comment you made about new opportunities for canola and soybean growers is interesting. It's my understanding that most often the products used are of cheaper offshore oils, such things as coconut and palm oil, the rationale being that the hydrogenation process is less with coconut and palm oils. Can you give us some idea right now, with some of the products you are producing, what percentages are soya, canola, coconut and palm oils?

**Ms Jan Mollenhauer:** You have asked a number of questions there. Let me start with the proportion of the product that would be derived from soybean or canola oils specifically. I would suggest that over 80% to 85% of the formulations of good-quality margarines with most of the branded manufacturers who would supply to Canadian consumers are indeed derived from soybean or canola oils. As you quote, offshore oils are very high in saturated fat and in fact would not be an ingredient that most manufacturers would look to include in a formula that would be healthful for consumers, to any high degree.

1600

**Mr Peter Kormos (Niagara Centre):** The readings I've got here indicate that the dairy farmers are disinclined to agree with you. Having said that, they're going to say their piece here today. You're not suggesting that a margarine product that perhaps, if the bill passes, would be dairy-enhanced would be called anything other than margarine, are you?

**Mr McPhee:** It would not be called butter. I think that is the point and the sensitive issue, as I understand the dairy farmers' concerns.

**Mr Kormos:** Similarly, you're not advocating that a soybean-based cheese be called cheese, because cheese is clearly a dairy product, right?

**Mr McPhee:** Right.

**Mr Kormos:** So it's imperative, if this bill passes, that once we get to the regulations, people know they're still fundamentally buying margarine.

**Mr McPhee:** Absolutely.

**Mr Kormos:** And it's imperative that people fundamentally know they're buying a soybean product that resembles cheese.

**Mr McPhee:** We're very firm and passionate advocates of clear communication to the consumer about what products they're getting, and we believe that the federal legislation currently in place provides for clarity of communication to ensure that people know what they're buying.

**Mr Kormos:** OK, because I didn't see any of the plastic cheese companies in your list here. Holy cow, I didn't know the same company makes Imperial margarine as makes Hellmann's as makes Vaseline and laundry detergent.

**Ms Mollenhauer:** Not at the same factory.

**Mr Kormos:** Thank goodness. It made me nervous.

**Mr Doug Galt (Northumberland):** Thank you for your presentation. We've heard before from some of the soybean people that there are federal regulations to deal with the composition. I'm a little concerned about that. Maybe you could walk us through some of that explanation. Also, what kinds of tests, how complicated and how expensive, would it take to know that soybean is at a certain percentage versus butterfat—butterfat's pretty straightforward—versus some of the other oils, for inspectors to go out and monitor that the composition stated on the label really is in fact in that container?

**Ms Mollenhauer:** There are certainly good manufacturing practices in place to make sure that products are meeting the specifications identified on the labels. Most food technologists would have very standard practice procedures for being able to quickly evaluate a product against its label.

**Mr Galt:** That's how you put it in, but when an inspector goes in and picks up a container to check it to see if it has what you say it has on the label—

**Ms Mollenhauer:** There are standard practice procedures that any food technologist and inspector would be able to evaluate what's in a product.

**Mr Galt:** And how expensive would that be?

**Ms Mollenhauer:** To actually go out and execute that type of thing?

**Mr Galt:** To actually carry out a test and check, is it in fact 50% soybean versus 50% a dairy product, or 40-60?

**Ms Mollenhauer:** I wouldn't anticipate, since that isn't a normal practice of good food manufacturing process, at least for our own internal standards, to do that.

**Mr Galt:** But you can't tell me what kind of cost it would be.

**Ms Mollenhauer:** I can't imagine that's burdensome.

**Mr McPhee:** I should point out that there are compositional standards for margarine federally, as there are for many other products, so it's not a new thing we would be dealing with.

**Mr Galt:** It's if you follow up the test with monitoring by an inspector to make sure it's what you say it is. That was my concern.

**The Chair:** On behalf of the committee, I wish to thank Unilever for coming forward and testifying.

## ONTARIO PORK

### ONTARIO CATTLEMEN'S ASSOCIATION

**The Chair:** From the agenda, our next delegation is a joint presentation from Ontario Pork and the Ontario Cattlemen's Association. Good afternoon, everyone. Could we have your names briefly at the beginning?

**Mr Dick van der Byl:** Dick van der Byl, president of the Ontario Cattlemen's Association.

**Mr Clare Schlegel:** Clare Schlegel, chair of Ontario Pork.



**Ms Kelly Daynard:** Kelly Daynard, communications manager for Ontario Cattlemen's.

**Ms Lilian Schaer:** Lilian Schaer, communications officer with Ontario Pork.

**Mr van der Byl:** Good afternoon. We are proud to be here today to speak on behalf of our organizations, as well as the Ontario Cattle Feeders' Association, the Ontario Sheep Marketing Agency and the Ontario Veal Association. Our presentation today, as well as our written submission, was developed in partnership and consultation with these groups.

Food safety is a key priority of the agri-food industry. We're pleased with the introduction of this legislation and supportive of its principles, which will help reinforce consumers' confidence in our products. We do have some concerns regarding details of the legislation and have various recommendations and considerations we'll be sharing with you this afternoon. Following our brief presentation, we look forward to addressing any questions or comments you may have.

Who we are: Together, the commodity groups represented here this afternoon comprise mostly 34,000 red meat producers in Ontario. We have an impressive combined total of almost \$2 billion in farm cash receipts per year.

What Bill 87 means to producers: We have participated in extensive consultations and discussions with the government for over a year on various components of food safety legislation. Commodity groups look forward to continuing to work with legislators and government officials as part of this ongoing process. Bill 87 recognizes the high safety standards and strong regulatory environment that have characterized Ontario's agri-food sector. The act will provide a modernized approach to ensuring the highest food quality and maximum safety.

Support and congratulations: As an industry, food safety and quality is a key priority at the producer level and has been in terms of official industry programs for over a decade. We want to be certain we are meeting consumers' expectations and take pride in producing wholesome products. By harmonizing food safety programs both locally and across the country, the Food Safety and Quality Act will be the foundation for ensuring that safety measures are applied from farm to fork. We support this legislation and congratulate the government on its introduction.

Considerations and recommendations: We have identified eight recommendations for the committee's consideration.

Overlap and existing on-farm food safety programs: Protecting the quality of our food supply involves policy and standards from both the provincial and federal levels of government. In addition to the provincial government, the federal Canadian Food Inspection Agency and Agri-Food Canada play key roles in ensuring food safety. We support the intention that regulations stemming from this legislation harmonize with existing federal legislation and programs to prevent overlap and unnecessary costs.

The integrity of our food safety system is also dependent on the activities of both producers and pro-

cessors. Commodity groups have developed and are implementing HACCP-based on-farm food safety programs that are proving to be very effective in improving food safety. The beef, pork, veal and sheep industries all have on-farm HACCP-based programs to proactively and scientifically address food safety issues. These programs are detailed in our written submission to the committee. We recommend that the government make HACCP and HACCP-based programs the basis of Ontario's food safety initiative.

**Mr Schlegel:** Licensing of farms: There are currently numerous certificates and plans required of farmers to address various environmental and safety concerns. Farmers must be able to reasonably manage the number of government and industry requirements to which they must adhere. Given this consideration, and our success thus far with HACCP-based programs, we feel there are alternatives other than licensing to ensure farmers meet food safety standards. We recommend making HACCP-based on-farm food safety programs the basis for ensuring that consumers have a safe food supply. Using an industry- and market-driven approach to certify farmers is preferable. We recommend that licensing should only be pursued by request from a commodity organization. We would look forward to playing a role in the development of regulations and standards relative to licensing if this policy is pursued.

Effective enforcement: The cornerstone of effective enforcement is based on consistency, availability of resources and qualified inspectors. We recommend that OMAFRA, given its expertise and familiarity with normal farm animal practices, should be responsible for enforcing the legislation.

The act provides inspectors with sweeping powers to enter premises, bringing to mind the need to maintain the integrity of on-farm biosecurity measures and precautions. We recommend that any inspector who enters a farm should adhere to existing biosecurity measures and be trained accordingly. Training must be specialized to reflect the nature of the inspections, as related to meat processing plants or on farms.

#### 1610

Penalties: The majority of farms operate within modest margins. When farmers are limited in the number of animals they can ship or have to close down their business for a period of time due to an investigation at another level, there are significant negative financial implications. We recommend that the committee give consideration to compensation for lost product value when farmers cannot ship animals due to investigations in the processing sector. We recommend for consideration that if a farmer is found innocent of a charge, they should be compensated for lost business. Finally, given the importance of timeliness in our business and that every day is a business day for farmers, we recommend specific guidelines for an efficient and timely investigation and appeal process.

Training requirements and education: Given the differences in the work and expertise required for the farming



sector versus the meat processing sector, we believe that there are also significant differences in the training required.

Further, given these sectoral differences, there is concern regarding the need for distinctions in the qualifications for licensees and the ability of commodity organizations to absorb the cost of related training. We recommend that commodity organizations be involved in determining the training necessary for each sector and the ability of organizations to implement and sustain such training programs.

Part III, "Quality and Safety Standards" of the legislation, addresses the issue that only individuals with the necessary qualifications, education, training and certification are permitted to carry out regulatable activities.

Livestock farmers have a variety of education and training backgrounds, including university or college degrees, industry training and on-the-job experience. Further, farmers are constantly upgrading and expanding their education through industry programs. Therefore, we recommend that various types of educational backgrounds and the industry's commitment to ongoing and specialized training programs be recognized with regard to part III, clause 11(f) of the legislation.

**Need for farm intelligence database:** We believe that a key component of successfully implementing on-farm food safety programs is a database for the agriculture sector to provide for the tracking of farm products. At this time, only some commodity groups have comprehensive databases of their producers. We recommend the committee give consideration to an amendment to provide for the establishment of appropriate funding to create, compile and maintain a database of farms for all commodity groups.

**Development of regulations:** We understand the importance of this legislation and its impact on the establishment of future regulations. However, with regard to the development of regulations, expectations must be managed in terms of what is possible and realistic for the industry to accomplish. We recommend that regulations focus on risk reduction as opposed to risk elimination, as this may be impossible to achieve in the agribusiness industry. We also recommend economic and food safety impact analysis during the development of the regulations to calculate potential industry costs and the need for compensation where necessary.

**Level playing field:** There is concern among the commodity groups about ensuring a level playing field in the national and international markets. Maintaining our domestic and international competitiveness is an industry priority. We recommend that the committee give consideration to ensuring that the cost of compliance is not so high that it creates a price disadvantage for Ontario producers relative to domestic and international competition.

**Some conclusions:** In addressing a priority as critical as food safety, we believe that this issue should be considered in the broader context of food security. Food security is a holistic concept that includes environ-

mentally sustainable food production, food safety measures and industry prosperity to ensure a constant national food supply.

With specific regard to provincial food safety measures, we urge the use of HACCP and HACCP-based preventive programs as opposed to the use of intensive inspections. Balancing the HACCP approach with clear regulations governing inspection and enforcement will allow for decisive action in a time of crisis.

Agriculture is a significant part of the Ontario economy. Producers are proud of their products and want to be sure of their future in the rural landscape.

We urge you to examine our written submission and want to assure you of our commitment to work with legislators and the government to making Bill 87 a success.

Thank you. We'd be pleased to answer questions.

**The Chair:** Thank you for that presentation. You pretty well used up the time allotted, unless there's a compelling reason for a comment.

**Mr Kormos:** Referring to page 6, where you recommend that OMAFRA be the responsibility of enforcing the legislation: are you stating that you want OMAFRA and its staff rather than, let's say, a private sector company, rather than inspectors for hire, to be doing these inspections?

**Ms Schaer:** Yes, that is what we're recommending. OMAFRA and its staff have a clear background knowledge of agriculture and what constitutes normal farm practices. We believe that would be very important for any inspector to have.

#### DAIRY FARMERS OF ONTARIO

**The Chair:** Referring to our agenda, the next presentation is the Dairy Farmers of Ontario. We have 15 minutes. If we could ask for your names for Hansard first, please.

**Mr Gordon Coukell:** Gordon Coukell, chairman, Dairy Farmers of Ontario.

**Mr Bob Bishop:** Bob Bishop, general manager.

**Mr Coukell:** I believe you have a copy of our presentation in front of you. I won't go into a lot of the details about who we are. I'll leave that for your perusal.

In Canada, the gross income from dairy is the third-largest sector in the agricultural field and represents \$4.7 billion. Here in Ontario we market 2.5 billion litres of milk a year and return to producers, to the rural economy here in Ontario, something over \$1.4 billion. So the dairy industry is a significant player in the economic aspects of this province.

From a food safety and quality standpoint, the dairy industry has been a leader in those areas for many years. In 1998, Dairy Farmers of Ontario accepted the responsibility for the raw milk quality program and inspection of farms in a download of a previous government function from OMAFRA. Under this program, DFO field service representatives inspect each farm on a regular basis to



ensure that the farm premises and milking facilities are up to acceptable standards.

In a recent letter from our Minister of Agriculture to myself, he praised DFO for its efforts in carrying out raw milk quality programs and indicated, "The DFO is to be commended on the excellent way in which it has assumed the responsibilities under this agreement and the professional manner in which this organization has consistently carried out those functions."

As mentioned by the previous presenters as well, the dairy industry is in the process of formalizing a quality assurance program, not only in this province, but it will be national. It will be in place in the next few months. The dairy industry is very much in favour of food safety and quality and has worked very diligently to ensure that.

When it comes to the specifics of Bill 87, we hope the foregoing explains some of the frustrations we are facing today. We are committed to the principles of better and more comprehensive food safety and quality legislation for the agriculture and food industry in Ontario. We feel we have been leaders in this field, as exemplified by what we have done in the past and what we are about to bring in for our industry in the future.

We were involved in several consultation exercises with OMAFRA, leading up to the introduction of Bill 87. We were pleased that the government saw fit to leave our well-developed quality regulations intact within the context of the Milk Act. However, we were surprised to see that when the bill was introduced, it included the intention to repeal the Edible Oil Products Act. We contend that the Edible Oil Products Act is not a food safety or quality issue and, as such, should not be part of Bill 87. In fact, we will provide some information to suggest that repealing the act, without due consideration of what is needed to protect the identity of dairy products, could lead to an increased health risk for Canadian consumers.

The Edible Oil Products Act prohibits the blending of dairy products and non-dairy products and restricts how edible oil products are marketed and displayed. Dairy Farmers of Ontario believe that repealing the Edible Oil Products Act would first of all create a vacuum in regulations protecting the identity of dairy products here in this province and do nothing to create uniformity across the country. The federal legislation that is in place is not adequate, in our view, to take the place of the regulations in the edible oils act here in this province. That is an extremely important issue which will be dealt with by Dairy Farmers of Canada representatives who will be making a presentation later.

1620

It could have a significant impact on the dairy markets in Ontario and Canada. It's very difficult to speculate what that would be, but if you look at the experience in the UK, where there was a vacuum in regulations, there was somewhere between a 10% and 15% impact on the dairy industry in that country. A 10% impact of \$4.7 billion would be significant. In this province, it would mean the loss of approximately 600 dairy farms and \$140 million in farm receipts at the farm gate.

We do not believe that it would bring any net benefit to agriculture in Ontario. While we have heard that there could be an increased use of soybeans, unfortunately the price of soybeans is set in Chicago, it's not set here, and I don't think there would be any increase in income to Ontario agriculture. If we were to lose 600 dairy farms, there would be a significant loss to the soybean industry in the amount of products fed to our dairy cattle.

Our analysis of the current situation: Seven of nine provinces have some type of legislation in place prohibiting or regulating blends and imitation of dairy products. We have not included Newfoundland in this analysis as they have just recently joined the dairy management program nationally. These seven provinces generate 89% of the dairy cash receipts in this country.

Our point here is that it doesn't make sense to repeal the Edible Oil Products Act in Ontario and create a vacuum in the legislative framework around blends and imitation dairy products when the majority of the other provinces recognize the need for legislation in this area. It is probably fair to say they also recognize the inadequacy of the federal legislation in this area.

One of the reasons cited by the government for wanting to repeal the Edible Oil Products Act is to create uniformity across the country. We contend that repealing this act will do nothing to achieve this goal unless there is adequate federal legislation in place.

Within the context of Ontario agriculture, we do not see any significant benefit for oilseed growers, as I mentioned earlier. I accept the argument that there may be products out there that will increase some uses, but I have here a label, and I would pass these around for your perusal, that indicates the problem we have with current products in the marketplace. This is a label from a spread manufactured in Halifax, Nova Scotia. It's called a "20/80 spread, made from a blend of vegetable oil and butter." When I look at this, directly under "20/80 spread" is "made from a blend of vegetable oil and butter." You would naturally expect that because vegetable oil is named first, it would be 20%, and 80% butter. In fact, when you look at the list of ingredients, 20% of the product is butter and 64% is hydrogenated vegetable oil, which has been identified as a concern in the Canadian diet by the health and stroke people. The representative from Dairy Farmers of Canada, who is a dietitian, will speak more to this issue later. This is the type of product that's in provinces within Canada and, in our view, improperly labelled, so that consumers do not really understand what they're buying.

Without the adequate regulations in place of either the Edible Oil Products Act as we have it here in Ontario today or proper national regulations, this kind of confusion and consumer deception would continue.

The simple solution from Dairy Farmers of Ontario's perspective would be to delete all reference to the Edible Oil Products Act in Bill 87. It does not need to be included with Bill 87, as its retention is clearly not a food safety and quality issue. If this action were taken, Dairy Farmers of Ontario would be in a position to whole-



heartedly and enthusiastically support the passing of Bill 87 and the government's goal respecting this bill could still be achieved.

Dairy Farmers of Ontario strongly urges this committee to support deleting the reference to the Edible Oil Products Act, especially the intention to repeal it for the reasons stated within this submission.

In the event that, for whatever reason, the government still decides to proceed with Bill 87 and retain the intention to repeal the Edible Oil Products Act, then Dairy Farmers of Ontario is requesting that it not be repealed until there has been time to develop and implement satisfactory standards at the national level by appropriate groups such as Dairy Farmers of Canada and the Canadian Food Inspection Agency. We think there needs to be a certain strengthening of those rules at the national level to protect the name of dairy products and the proper labeling of products.

One issue that's just been brought to my attention, and it's not in the presentation, Mr Chairman, is that the food safety risk component aspect regarding dairy products should be included in the act. It has not been mentioned in the proposed act, and we would be in favour of that. The government should have the ability to assess food safety risks and act accordingly. That, to me, is an omission that has just come to our attention. Thank you very much, Mr Chairman, for your time.

**The Chair:** Thank you. We really just have about half a minute for each party for a quick comment.

**Mr Galt:** I'd like to ask just a very quick question, if I may. Yesterday, the opposition was very enthused that milk is milk and that all mammalian milk should come under the Milk Act. I'm just wondering if supply management, if you people, are prepared to take on responsibility such as the opposition is suggesting.

**Mr Coukell:** It hasn't been raised with me but we'd be prepared to look at the milk from other species being included in the Milk Act, yes. It hasn't been raised with me before but we would look at it.

**Mr Galt:** So you'd be prepared to manage it and oversee it and look after it—

**Mr Coukell:** I would have to know what was being talked about, but we'd certainly look at it.

**Mr Peters:** On a similar line, there were presentations made yesterday from the Goat Milk Producers' Association, the sheep milk producers' association, expressing some concern over the definition in the legislation that milk means milk from cows. The comments from the goat and sheep producers are taking some exception to this definition, and I take it from the comments that you just made to Dr Galt that you would be prepared to sit down and talk and have some discussions in that regard?

**Mr Coukell:** Absolutely. Goats are included in the Milk Act at the present time. It was the government's suggestion that they would be removed; it wasn't our request.

**Mr Peters:** It wasn't your request.

**Mr Kormos:** I wish I had heard your comments before I had a chance to talk to the Unilever company.

You know what I was getting at when I was talking to them, right? I wanted some reassurance that they weren't going to try to pass off what they were making as dairy products. You're not as convinced as they are that that will be the lay of the land if this bill passes. Is that what you're telling us?

**Mr Coukell:** That's right. The national regulations at this point in time are not adequate to protect—

**Mr Kormos:** But you're prepared to participate in amending the EOPA in due course?

**Mr Coukell:** Yes, absolutely.

**Mr Kormos:** That's interesting.

**The Chair:** I wish to thank the DFO for coming forward. Thanks again.

1630

## WOOLWICH DAIRY

**The Chair:** The next delegation on your agenda is Woolwich Dairy. Good afternoon. Could we have your names for Hansard, and we have 15 minutes, if you could leave a few minutes for any comments or questions from the committee.

**Mr Tony Dutra:** My name is Tony Dutra. I'm CEO of Woolwich Dairy.

**Ms Joanne MacNeill:** Joanne MacNeill.

**Mr Dutra:** I'd like to thank you for the opportunity to share my opinion on this new regulation. I'd like to state that Woolwich Dairy supports Bill 87 and the Food Safety and Quality Act.

Just very quickly on who Woolwich Dairy is, for those who don't know about us, Woolwich Dairy has been in business for 15 years. We are recognized as the largest goat cheese producer in Canada. We are just a goat cheese producer.

In 1997 we moved to our present location in Orangeville. At that point in time we had invested approximately \$6 million into our facility and equipment. Last year Woolwich Dairy processed approximately 10 million litres of goat milk. This represents approximately 75% to 85% of all goat milk in Ontario. We employ approximately 60 people and purchase milk from as many as 175 to 200 farms throughout Ontario.

Our annual growth over the last five years represents approximately 35%. So our growth in the industry has been significant and we continue to work hard on that. That's a little bit about Woolwich Dairy.

Some of the concerns that Woolwich has are in relation to:

Regulations under the current Milk Act are inadequate. I say the word "inadequate"; the reason is that it does not meet the needs of the goat milk industry in today's time. They were developed primarily with the cow milk industry in mind. At that point in time there were very few goat milk producers and even fewer goat cheese producers. So perhaps they were fine 30 years ago, but times have changed.

Specifically, regulation 761 of the Milk Act in regard to raw milk sampling and testing programs, which were designed with the cow milk industry in mind through the



Dairy Farmers of Ontario to be able to collect the samples, do the testing and do the reporting system. That testing and system does not apply to our industry. As you can see, the Milk Act is fine for the cow milk industry and I can appreciate that, but it doesn't seem to be working for our industry. That is why we are supporting this new bill.

Some of the challenges that we are facing: Our customers, our consumers, are demanding safe and high quality products. We in turn must demand the same from our producers. Woolwich Dairy continues to improve its quality, its safety of all its products and continues to work with producers to improve the quality of our milk. We are also prepared to assist in the task force to develop regulations under the Food Safety and Quality Act. We truly want to be a part of what this regulation has to do, seeing that we have such a large stake. Woolwich Dairy understands that with some new regulations there opens a door for change, and unfortunately we do not know what that change will entail. Therefore we will support this legislation, provided that we are allowed to be part of the process with our industry, with our producers. There could be some costs incurred to the industry, both from a manufacturing and from a milk processing point of view. Therefore I really appreciate the time to be able to speak on that behalf at a later date.

Just to finish off, food safety: the main reason that Woolwich Dairy believes the Food Safety and Quality Act is important is, I believe, that it meets the new demands on the global industry, not just Ontario. The global industry demands high-quality food and safe food. I think if you look at all the challenges of the world, this act will fulfill that.

One of the problems we have come across was when we were recently audited by the FDA. It was an audit that we weren't counting on, but as an exporter to the US, we were audited by the FDA. Luckily we did manage to breeze through that. The only challenge we had was when we had to explain to them how we control the raw milk. They were quite surprised at the lack of legislation and lack of control of the raw milk by the time it got to our door. We're currently under HACCP, going through HACCP recognition, and as to date, the one stumbling block we are trying to overcome is the fact that our raw milk is not under control. There seems to be a common problem there.

Woolwich Dairy supplies the US, we supply all of Canada and we supply other countries. The common question that is asked of us is, "Are you HACCP-recognized?" and we would like to say so. But based on what we are hearing now from the HACCP auditors, we are finding it difficult to say that. This bill will definitely go a long way to assist us with that.

There are many points above this as well. I've handed out some leaflets that I would appreciate if you would look at, understand, and I'm glad to answer any of your questions.

**The Chair:** Thank you, Mr Dutra. That leaves a few minutes for each party. We'll begin with the Liberal Party.

**Mr Peters:** I commend the Minister of Agriculture for the commitment he made when we embarked on Bill 81, that unprecedented commitment to have comments on the regulations and standards. It's something that I wish would happen more often and it didn't happen here. It's very obvious, in listening to presentations and reading the presentations yesterday, that there's a lot of concern out there for some comment into the development of the standards and regulations. I know the minister's staff is here. I hope that some of the government members will take the message back, that he make the same commitment here in dealing with the changes with food safety as the commitment he made in dealing with Bill 81. It would be nice to have that commitment made for every piece of legislation, but we'll just deal with the agricultural ones today.

There have been presentations made, in particular yesterday from the goat producers and sheep producers, from their milk marketing standpoint. What would you prefer to see, as somebody who's in the business, for the processing of cheese? Would you prefer to see goats and sheep included under the Milk Act, left under Bill 87, or would you like to see a goat milk act and a sheep milk act?

**Mr Dutra:** I don't see the current Milk Act, as it stands, working for the goat milk industry. I think the act is outdated. If you look at the concerns of consumers around the world, it's the safety and the quality. The Milk Act was designed primarily with marketing in mind. We have to understand that. The act may work for the cow milk industry. I think we can go ahead and do something that reflects today's industry, which is food and safety and quality. So I would say that being part of the Milk Act is not what I would want. I'm proposing being under the Food Safety and Quality Act, and in there writing legislation and regulations that deal with our industry.

1640

**Mr Kormos:** Thank you kindly. I've got your submission here and I'm looking at a letter from Gar-Mar Farms. I don't know if you know him: Garry Claassen. He's in Teeswater, Ontario. He has written here that he's proposing, as a goat dairy farmer, that the issue be split, that the management and marketing of his milk or dairy product be left under the Milk Act but that the food safety issue be dealt with by Bill 87. Then I've got the Ontario Goat Milk Producers' Association, and I hope I'm interpreting their position correctly, because they're saying, "No, don't confuse us or involve us with Bill 87. Leave us under the Milk Act. Then you're here, and again, not discounting your submission, saying, "No. Forget the Milk Act. We're going to go 100% with Bill 87." Wow, what's going on? And what's going on with the Ontario Goat Milk Producers' Association? Don't you belong to them?

**Mr Dutra:** I can't speak on behalf of any other organization except ourselves. The goat milk association is producers. They supply us with milk.

**Mr Kormos:** You make the cheese.



**Mr Dutra:** We make the cheese with that milk. Their views and opinions are pretty much their own. I tend to always look at what the market demands are on me. When I sell cheese to a major supermarket with several hundred stores throughout Canada and the US, the demands they put on me are basically the demands I have to put back on my producers.

**Mr Kormos:** So you're the cheese industry, you're the processor, but you're here addressing the matter where goat milk people should be under, right?

**Mr Dutra:** I'm here addressing where they should be under because it has a direct impact on what I do. I buy the milk, and if the milk does not meet the new food safety quality standards that the world expects, I in return have to take that, do something with it and supply my customers. If my customers are not comfortable with the raw milk supply, I'm out of business.

**Mr Kormos:** I'm starting to get a better handle on it.

**Mr Galt:** Thank you for your presentation. It's interesting to hear the goat milk processors from your experience. Certainly what we were hearing from the sheep milk producers, and it would appear to me that the perception is in their mind rather than in the consumer's mind, is that they're concerned about having a safe product to be able to purchase. When it comes to marketing, we're talking about a supply management group of cow's milk that's very specific, and that's not there for other mammalian species, at least at this point in time. So it really doesn't blend in to that particular act as I understand it.

I know you're expressing concern about consultation, and so is Mr Peters, but there's just no question, as regulations are developed, that there will be extensive consultations with you people, with various people. Extensive consultations on all bills and regulations have been a hallmark of our government.

If I have a few more minutes—I guess I do, Chair. This perception was coming from the sheep milk producers. They were really concerned yesterday, and you're not concerned about that perception and you're a processor putting that cheese out there. Why are you less concerned than the dairy sheep producers? Down the road we may have camels or water buffalo or deer knows what else, horses, that produce milk. As a matter of fact, as I understand it, after cow's milk, in the world, water buffalo milk is the most common milk consumed. As we move down the road, how do you see this changing?

**Mr Dutra:** The only way that any industry can survive in the new world is by producing a very high quality, safe product and everything we do has to reflect that. When we designed systems years ago, that wasn't necessarily what was in mind; it was marketing, be it the Milk Act or many other acts. The future is based on food safety and food quality and the confidence of consumers, so I have to embrace this type of change because it is the change that the world is going through. The current system does not offer that, even though there are some doors that are not open and perhaps can be very scary when you open those. I'm confident that if we're

allowed, ourselves and the producers, to have enough input and explain to the politicians what this industry needs to survive and to continue to grow—it's an industry that's been growing on its own.

**Mr Galt:** That's tremendous.

**Mr Dutra:** We can continue to do that but we cannot ignore what our consumers are saying, not just in Canada and the US. So I can appreciate the concern of certain producers in the sheep and in the goat, and unfortunately farmers always work in very tight margins. That's why I say you cannot exclude them from this discussion. We have to do something to make sure they supply us with milk, or else we have nothing to produce.

**The Chair:** Thank you very much. We appreciate Woolwich Dairy coming forward.

## SOYFOODS CANADA

**The Chair:** The next delegation on our agenda is Soyfoods Canada. I would ask them to come forward, please. Good afternoon. I would ask for your names, please. We have 15 minutes, and if you could leave some time at the end for questions.

**Mr Ron MacDougall:** I'm Ron MacDougall, a director with Soyfoods Canada.

**Mr Eric Hart:** I'm Eric Hart, a director at Soyfoods Canada.

**Mr MacDougall:** To start with, I'm a soybean farmer in Ontario, representing the Ontario soybean growers on the Soyfoods Canada board of directors. Eric represents Galaxy Foods and is also a director on the board.

Soyfoods Canada is an industry association committed to encouraging growth, integrity and sustainability in the Canadian soy food industry. Food safety is very important to the soy food industry, as our customers demand the utmost quality from us. Bill 87 is an important piece of legislation that will give consumers increased assurance that we are supplying a safe product. In particular, we applaud the repeal of the Edible Oil Products Act.

The Edible Oil Products Act was passed over 50 years ago, when adequate labelling regulations to prevent consumer fraud and misrepresentation of products were not in place. Now, however, these regulations, which were meant to protect consumers, are instead denying consumer choice. This outdated act also limits marketing opportunities for Ontario soybean growers and food processors and stifles innovation. In addition, the Edible Oil Products Act is no longer necessary to prevent perceived labelling fraud and contravenes Ontario's commitment to the Agreement on Internal Trade.

Consumer choice: Ontario has changed significantly since the 1940s. The province's demographics have changed and technology has advanced, resulting in the development of quality new foods that were not contemplated when the act was created. These oil-based products are now mainstream, not simply dairy alternatives. Ontario consumers are demanding vegetable oil-based products for health, religious, cultural and personal reasons. Unfortunately, the choice in products to meet



their needs is currently very limited due to the Edible Oil Products Act.

Soyfoods Canada believes that making soy products available to these consumers will not reduce dairy market share but rather create a whole new market. Consumers should determine whether products have a place on grocery shelves, not the government.

**Opportunities for food processors:** The edible oils-based products industry currently makes a significant contribution to the Canadian economy, accounting for \$570 million in total sales and employing approximately 11,000 people according to A.C. Nielsen in 2000. Based on the market share for edible oil/butter blends in other jurisdictions, the immediate potential for blends in Canada, in direct sales, is \$226 million, with corresponding direct employment of 2,260 new jobs. In Ontario alone, total direct sales potential for the blends market is \$66 million, with corresponding direct employment of 660 new jobs.

Ontario businesses are currently denied the opportunity to compete in the emerging market for innovative blended products because of this outdated Edible Oil Products Act. Unfortunately, since the Edible Oil Products Act prohibits Ontario from servicing the blended product market, our competitors have an advantage.

In addition, opportunities exist for both the dairy industry and the edible oils industry to enhance their products with the reciprocal use of ingredients. The production of new, innovative products will be possible in a less regulated market. Repealing the Edible Oil Products Act will enhance the industry's ability to adapt to a changing marketplace and remain competitive in a global economy.

**Opportunities for Ontario soybean growers:** Soybean growers who produce specialty quality food grade soybeans receive a premium price for their crop. The repeal of the Edible Oil Products Act will allow growers the opportunity to market more of these varieties domestically, thereby increasing the demand and increasing the premiums paid to Ontario's 24,000 soybean growers. Currently, over 95% of these premium soybeans are exported. A domestic market would mean that instead of shipping soybeans out of Ontario, value-added products can be exported, including use in the domestic market.

1650

**Federal regulations address product labelling:** federal regulations prohibit the use of terms such as "butter," "cheese," "milk," "ice cream," and "cream cheese" on products that are not made with cow's milk. The Food and Drugs Act, the Canada Agricultural Products Act, and the Guide to Food Labelling and Advertising are in place to address product labelling and prevent fraud. Any vegetable oil products have to be named with appropriate non-dairy terms. In other provinces where these products are allowed to be produced and marketed, federal authorities review the labels to confirm they comply with the requirements of relevant regulations.

In 2000, the Federal/Provincial/Territorial Agri-Food Inspection Committee working group recommended,

"Provinces should deregulate products that imitate or resemble dairy products, whether or not they contain dairy ingredients, and defer to existing federal regulatory processes that address the consumer information and fraud issues." The Edible Oil Products Act is challengeable under the Agreement on Internal Trade and contravenes Canada's international trade commitments under NAFTA and the WTO.

If I may conclude with some written comments that aren't in the presentation: We have not given very much data on the impact to the soyfood industry. You can find studies on the impact for our industry and also for the dairy industry. Each sector will provide the data that would be most beneficial to them in their presentation. We feel the OMAFRA data, which is done and which you've most likely seen, is the most unbiased and therefore the most credible.

This is not a vegetable oil versus dairy issue. This is a consumer choice issue. It's a product development issue. It's a market development issue. It's a trade issue. This is an opportunity.

Thank you for the opportunity to make this presentation.

**The Acting Chair (Mr O'Toole):** Thank you for your presentation. That leaves about three minutes per caucus, and this round starts with the NDP.

**Mr Kormos:** I don't know a whole lot about this: Ontario consumers demand vegetable oil-based products for religious reasons, and the EOPA prohibits or prevents the manufacturing of a vegetable oil-based product for religious reasons. What would that be?

**Mr Hart:** The Edible Oil Products Act prohibits the production of it, period.

**Mr Kormos:** What? Give me the type of product that one's religion would dictate one should eat that the EOPA prohibits the production of?

**Mr Hart:** OK. Let's give an example of, say, a cheese alternative using soy. If there is no cheese alternative right now—for example, one made with soy—people who come from eastern religions, or something, who don't eat products made with milk, things like that, don't have an alternative right now.

**Mr Kormos:** OK. I read in one of the newspaper articles a reference to soybean cheese. What do you call soybean cheese if you don't call it cheese?

**Mr Hart:** It's just called a slice. That's basically what it's called.

**Mr Kormos:** OK, a soybean slice.

**Mr Hart:** That's correct, a soy slice.

**Mr Kormos:** But there's nothing in the EOPA that prohibits the manufacture of a soybean slice.

**Mr Hart:** That's correct.

**Mr Kormos:** So, I still don't understand where the problem occurs, then, where the prohibition occurs.

**Mr Hart:** It's the mixture. The EOPA prevents the mixture of—

**Mr Kormos:** Quite right. So what religion requires a blend of oil and dairy products?

**Mr Hart:** I'm not saying any religion—are you saying “prevents?”

**Mr Kormos:** No, “requires.”

**Mr Hart:** Requires? No religion requires that. What I'm saying is, they're saying they want a product that has no dairy in it. That's basically what I'm saying.

**Mr Kormos:** Quite right. But there's nothing in the current act that prohibits you from manufacturing a product with no dairy.

**Mr Hart:** But it also prevents you from making a product that resembles anything that looks like dairy.

**Mr Kormos:** Ah, OK. You mean in terms of colouring?

**Mr Hart:** No.

**Mr Kormos:** Shape?

**Mr Hart:** The shape, the size, the presentation—whatever it is.

**Mr Kormos:** So the same argument applies for cultural, because I looked at the cultural. I understand the personal reasons issue.

So all you want, then, is the opportunity to make products that look like the equivalent dairy product and you'll still call them soybean slices.

You see, what I'm confused about is that I know the argument from Lever, and I understand their argument. They want an opportunity to mix the two products. They said they weren't going to try to pull the wool over anybody's eyes, like this 20/80 vegetable butter spread. I agree; I've looked at it. It should be called 80/20 or 20/80 butter vegetable.

Anyway, I'm confused because I can't understand where the argument comes from that says religion dictates a blend, or dictates a vegetable base, because you're telling me you already can make the vegetable-based product. So that's where I'm left confused.

**Mr Hart:** Again, what you're saying is that the act prohibits the manufacture of any product that resembles or looks like it, basically. So that's why we're asking for it to be removed as well.

**Mr Kormos:** But that's not it.

**The Acting Chair:** Thank you for that question. It would now turn to the government side.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** Thank you, Ron. Welcome to Queen's Park. It's always nice to have somebody from the riding making a presentation.

You were here when some of the previous presenters spoke about edible oil, and they had some concerns with regard to the health and safety of the consumers. They also mentioned the price of oilseed being set in Chicago. I don't know where the price of milk is set. Yesterday, we had a presentation from a milk farmer who lives on St Joseph Island. I was quite sensitive to his presentation, because he does live on an island. He mentioned that the cost of feed is 30% greater because of transportation. The critical mass is not in the area, so there's only one implement dealer, there's only one of everything, so it's very difficult to compete over there.

When we look at statements stating that products made from soybeans may impact on the health and safety

of people, I remember as a kid hearing about polyunsaturated and saturated fat in advertisements. Well, fat is fat to me. I don't know what it is. We heard from one presenter that there's a 3% to 5% impact on the industry; another presenter mentioned anywhere from 10% to 15%. Have you got any studies as to what impact it may have on the dairy industry?

**Mr MacDougall:** It's interesting that they see a great impact on the dairy industry but not a great advantage to the vegetable oil industry. As I said in my presentation, you can pick out any study you want. That's why I feel the job OMAFRA has done is probably the one you should look at, because it's an unbiased presentation. I believe that's where the 3% to 4% loss in butter consumption might come from. It also mentions the advantage of, I think, a 5% increase with a blended product, which would include butter in it, so that would be an increase there that would offset that.

**Mr Beaubien:** So you buy into the 3% to 4% impact?

**Mr MacDougall:** Yes.

**Mr Beaubien:** I agree. The act is 50 years old. I think I would look at it in a positive manner, that there is all kinds of potential for a new product, as you point out. So, as opposed to maybe a 5% loss, there could be maybe a 5% gain.

**Mr MacDougall:** Yes. The other thing is that we have a very innovative agri-food industry in Ontario, and they're going to look at products that consumers want and develop them. Those new products may contain both dairy and vegetable oil.

**Mr Peters:** I have two questions. Under your “Opportunities for Food Processors,” when you say there's potential for a blends market of \$66 million with direct employment of 660 new jobs, when you had these figures put together for you or compiled for you, did you do any corresponding work on the impact? You're talking new jobs and new opportunities. Was there any work done on impact on other sectors, on job losses or potential cuts in other areas?

**Mr MacDougall:** I'm not sure, but I'll go back to the OMAFRA study. It said there could be an impact of maybe 3% to 4% on butter consumption in the province, if I'm correct on those numbers, but also an increase in the consumption of butter through blends. So if you look at those two issues, they basically offset one another, so the impact on the dairy industry, I think, would be very small.

**Mr Peters:** So that means the dairy industry loses \$66 million and 660 jobs?

**Mr MacDougall:** Not necessarily, because when you develop butter, there's a job there. When you develop vegetable oil, there's a job there. When you put the two together and develop blends, you're going to increase jobs there.

**Mr Peters:** What assurances do you have or what studies have you done from Soyfoods Canada? You're talking about new opportunities for Ontario soybean growers, but what studies have you done to look at it? With the repeal of the edible oils act, how much of that



are the soy producers going to get? How much are palm oil, coconut oil and canola going to get? Are you confident that soybean is going to get the bulk of these new opportunities, or have you looked at the potential impact of opening this up, of letting coconut, palm and canola in?

1700

**Mr MacDougall:** I'll let Eric tell us how much more he's going to pay the grower for the soybeans, but in Ontario vegetable oils are different than palm oil. They have to be listed differently. I think in the presentation by Unilever they said that well over 85% of the edible oil products used in Ontario are vegetable oils, and most of them soybeans. The majority of oil produced in Ontario is soybean oil from Canadian soybeans, Ontario soybeans; 80% to 85% of the soybean production is in Ontario, and that is important. Have we done any studies on what it's going to be, how much they're going to pay? **No, we haven't.** But Eric's going to tell you how much more he going to pay me for my soybeans.

**The Acting Chair:** Quickly; you have half a minute.

**Mr Hart:** Well, basically in answer to your question about if we've done any research, we've done research among our members, and what we've been told by our members is that this is an opportunity for them to invest in new products, develop new products and things like that. It hasn't been quantified as such, but right now we have between 30 and 40 members, and more than 80% have said they are interested in developing new products if this act is repealed.

**The Acting Chair:** That concludes your presentation, and I thank you for that.

#### DAIRY FARMERS OF CANADA

**The Acting Chair:** We'll call forward the next group, the Dairy Farmers of Canada. Welcome. You have 15 minutes to make your presentation, which would include, if you wish to leave time, questions from members. If you could give your name for the Hansard record, thank you.

**Ms Sara Waterton:** My name is Sara Waterton.

**Ms Helen Bishop MacDonald:** My name is Helen Bishop MacDonald.

**Mr Archie MacDonald:** Archie MacDonald.

**Ms Waterton:** I'd like to thank the committee for this opportunity to speak to Bill 87. I'm the assistant director of policy and government relations with the Dairy Farmers of Canada. Today I would like to speak about the important labelling requirements that would be lost if the Edible Oil Products Act were repealed at the time that Bill 87 is passed.

The Edible Oil Products Act sets out labelling restrictions on imitations. The act forbids imitations from implying that these products have any relation to a dairy product. It forbids using a dairy term or expression on a food label, and it forbids an imitation from depicting a dairy scene. Because of these restrictions, the Edible Oil Products Act provides important guarantees to con-

sumers. The food labels on the packages of foods being passed around the committee right now violate the Edible Oil Products Act. These foods were all bought at a store in Ottawa. Today, dairy producers and consumers can seek recourse for the mislabelling of these products through the Edible Oil Products Act. If the Edible Oil Products Act were repealed at the time that Bill 87 is passed, this recourse and protection of dairy terms would be lost. This is because imitations would become regulated by the scheme that is currently in place at the federal level, and no federal legislation regulates the labelling of imitation dairy products adequately at this time.

The federal Food and Drugs Act establishes a general prohibition on labelling food in a manner that would mislead or deceive consumers as to the character, value, quantity, composition, merit or safety of the product. The federal Consumer Packaging and Labelling Act prohibits labels on prepackaged products from displaying false or misleading representations relating to the product. However, the problem with these acts is that the prohibition sections are too vague. They do not specify, like the Edible Oil Products Act does, what would constitute confusing or misleading labels with respect to imitation dairy products.

In order to be adequate, federal legislation would have to explicitly state that implying that an imitation is a dairy product, using dairy terms in conjunction with an imitation or depicting dairy scenes with an imitation product would be false, misleading or deceptive.

Another piece of federal legislation is the dairy products regulations made pursuant to the Canada Agricultural Products Act. However, these regulations, which do include labelling requirements, only kick in once a food meets the dairy standard. They do not deal with imitations or blends that do not meet the standard. The result is that labelling restrictions exist for dairy products but not for imitation dairy products.

Finally, the Guide to Food Labelling and Advertising published by the Canadian Food Inspection Agency is the only regulatory instrument at the federal level that gives examples of acceptable and unacceptable labels on imitation dairy products. However, Dairy Farmers of Canada went to court and relied on the guide as authority for the proper use of dairy terms and the registrar of the Trademarks Opposition Board, which was the organization hearing the case, ruled that the guide is of no legal effect because it is not mandatory under any piece of provincial or federal legislation. In addition, the section dealing with dairy terms is vague and has to be reworked. This is the problem with the guide.

Taken together, existing federal legislation and the Guide to Food Labelling and Advertising are not adequate to ensure the proper labelling of imitation dairy products. Last year a Federal/Provincial/Territorial Agri-Food Inspection Committee working group recommended that provinces should deregulate products that imitate or resemble dairy products, whether or not they contain dairy ingredients, and defer to existing federal



regulatory processes that address the consumer information and fraud issues. Repealing the Edible Oil Products Act at the time that Bill 87 is passed would be Ontario's contribution to this process. However, the same federal/provincial/territorial recommendation also called for reviewing and modifying existing federal regulations and guidelines if such a review is required.

Dairy Farmers of Canada is committed to working towards improving the federal legislative system to ensure that imitations are adequately regulated. We are working closely with the Canadian Food Inspection Agency to come to a mutually acceptable way of addressing our labelling concerns while still allowing consumers to have access to new products and to allow the marketplace to embrace new food technologies.

At this time, however, discussions are still ongoing and we ask that this committee consider holding off on repealing the Edible Oil Products Act until changes are made to the federal regulatory system.

**Ms Bishop Macdonald:** My name is Helen Bishop Macdonald and I'm director of nutrition for Dairy Farmers of Canada. I would like to point out that I'm speaking today as a dietitian with 30 years' experience teaching med students, nurses and dietitians. I'm a charter fellow of the Dietitians of Canada and, as a dietitian, I'm greatly alarmed by the possibility of a repeal of the Edible Oil Products Act. Vegetable oil is a good thing, but where I grew up in Cape Breton they had an expression that I'll tidy up, and it was that "there's a difference between scratching your head and tearing it all to pieces." What we are risking with the repeal of this act is that Canadians and Ontarians will be wallowing in vegetable oil.

So what, you might ask, is the problem with vegetable oil? Vegetable oil's main component is linoleic acid. It has been established absolutely that linoleic acid, in large amounts, is carcinogenic. So that's point one. Point two, there are many studies showing a link between a high intake of vegetable oil—polyunsaturated fatty acids—and asthma in children and eczema. Also, because linoleic acid is highly oxidative, there can be an increased risk of atherosclerosis. More than that, most vegetable oils, as they are consumed today, are consumed in a hydrogenated manner, and the hydrogenation of vegetable oils produces trans-fatty acids. Trans-fatty acids not only raise the bad cholesterol, the LDL, but they lower the good cholesterol, the HDL. Then, there has been a link between excess linoleic acid and certain types of cancer: prostate cancer, breast cancer and colon cancer. So that's the problem with excess linoleic acid. Again, it's not that vegetable oil in and of itself is bad, but when we consume too much of it we run the risk.

Yesterday, apparently the Canadian association of consumers suggested that Canadians want to reduce their intake of saturated fats, the implication being of course that all animal fats or all saturated fats are bad. Not true. Saturated fats or animal fats are made up of a variety of saturated fatty acids. True, some of them do raise the bad cholesterol but others raise the good cholesterol, the

HDL. As noted a nutritionist as Walter Willett from the Harvard school of medicine has said that animal fats are most likely neutral in terms of heart disease because one offsets the other.

**1710**

Then, we have the fact that the fats of ruminant animals contain a substance called conjugated linoleic acid that has been shown absolutely to be anti-carcinogenic. So what we're doing now and what has been done for the past 50 years is that the intake of the carcinogen has increased and the intake of the anti-carcinogen in the animal fats has gone down.

Since 1900, consumption of linoleic acid and vegetable oils has gone up 400%. We are wallowing in the stuff. So yes, again, vegetable oils are good, we need them, but animal fats have their place as well. If this act goes through, we will be filling milk with polyunsaturates, and the result for Ontarians will be really bad.

I just want to throw in that no recognized religion in the world prohibits the consumption of dairy. Thank you.

**Mr MacDonald:** My name is Archie MacDonald. I'm director of economics and market research for Dairy Farmers of Canada. I'm currently chairman of the standing committee on policy and economics for the International Dairy Federation, which represents about 80 countries worldwide, and I might say in passing that I spent about 12 years as a member of the board of the Consumers' Association of Canada, Ontario branch, in various capacities.

The issue that I want to address here today is the economic impact of the removal of the Edible Oil Products Act under Bill 87. There are several elements of economic impact, including the effect on economic activity in Ontario and in Canada. There have been various estimates made, albeit many of them old, including some from the Treasury and economics department in Ontario, that show that dairying has one of the highest multiplier effects in terms of economic activity of any industry in Ontario and/or in Canada. This has been substantiated by further work done at the national level using input-output analysis.

The negative impact of the introduction of blends alone was estimated by a Laval University study as 15% of total butterfat consumption in Canada, a market that's currently worth nearly \$2 billion. In addition to blends, of course, the repeal of the Edible Oil Products Act would allow for substitution of fat in milks, in cream, in cheese, in ice cream and yogourt—basically, all the dairy products. Losses upwards of \$1 billion are possible in dairy industry sales, with an economic impact through the multiplier effect of somewhere between \$5 billion and \$6 billion.

Little or none of this may be offset, provided the edible oils or the products made thereof are sourced offshore. I might say that with my work internationally I've seen the operation of multinational firms like Unilever and Nestlé, and their tendency is to source products wherever they can get them cheapest. As far as loyalty is concerned, to the consumers, yes, to a certain extent, but



by and large the only loyalty these multinational firms have is to their shareholders. So anybody who puts stock in there replacing what might be lost in Canada is putting their money at risk.

Dairy production is essential to the rural economy of many parts of Canada. Dairying is labour-intensive and so is the processing of many of the industry products. Cheese is a good example. In Canada, the industry is estimated to directly or indirectly provide full-time employment equivalent for nearly 100,000 people, with nearly 40% in Ontario. Retail sales of milk and milk products are valued at nearly \$8 billion. The farm component of that, as mentioned in other documents, is in the neighbourhood of \$4.7 billion to \$5 billion.

Another area that Helen referred to in terms of potential impact of this legislative change is the cost to society of the dietary change that would be result from the repeal of the bill. I can say that this is not a trivial economic impact.

Given the results of previous studies and new information, it would be appropriate at least to have a new look at the economic impact of this bill and its effect on the Ontario and Canadian economies, on rural Ontario and Canada, and on health costs before proceeding with any rescinding of the Edible Oil Products Act. From our assessment of the impact, it is apparent that the gain for the few who want these changes is outweighed mightily by both the specific losses to the dairy industry and the general losses to society, in both economic and social terms.

Insofar as the studies are concerned, I want to say that the reference that was made by a previous presenter to an OMAFRA study is news to us in the dairy industry. We have not been provided with that information, and therefore it seems a little unfair that someone would be and the dairy industry would not.

**The Chair:** Thank you, sir. That pretty well uses up our 15 minutes. I wish to thank the Dairy Farmers of Canada for coming forward.

**Mr Kormos:** Mr Chair, are we on time? Ahead of time?

**The Chair:** We're 15 minutes behind schedule.

**Mr Kormos:** There goes the foundation for my suggestion.

**The Chair:** I wish to thank the presenters.

**Mr Howard Cornwell:** Mr Chair, I'm up next and I won't be using all of my 15 minutes, so if five minutes could be used for questions, I would give it.

**Mr Kormos:** I seek unanimous consent for that, Chair.

**The Chair:** With unanimous consent I think we could do that. I'll begin with the PCs, if you wish to do so.

**Mr Galt:** Thanks very much. Looking at some of the packages you brought in, maybe we can start understanding now why the federal legislation isn't necessarily going to handle the labelling and the composition issue that has been brought up before.

You did mention about holding off repealing this piece of legislation; therefore, you must have a time frame in

mind when it might be brought in. What would that time frame be that you were thinking of?

**Ms Waterton:** Right now, the Dairy Farmers of Canada is working with the CFIA on this issue and we're trying to come to some sort of agreement. They're currently opening up the Food and Drugs Act and the dairy products regulations for amendment and they've given a timeline. They don't think it will be done within a year.

**Mr Galt:** So somewhere between one and two years, then.

**Ms Waterton:** Over a year.

**Mr Galt:** It being the federal government, that could be 10.

**Ms Waterton:** Yes, but they have said that it will take more than a year.

**Mr Galt:** Just one more, if I quickly can. I'm wondering, how many gallons of linoleic acid would one have to consume per day to be carcinogenic, to start producing carcinomas? Is this based on rats, or where does this information come from?

**Ms Bishop MacDonald:** The initial studies were based on rats, in which they established that linoleic acid was an absolute carcinogen.

**Mr Kormos:** In that case, I'd rely on it, Doug.

**Ms Bishop MacDonald:** In terms of humans, they haven't arrived at an amount, but they did establish many, many years ago that not more than 10% of energy should come from polyunsaturated fatty acids. But health professionals and the public alike have forgotten that, and the mantra is that more vegetable oil is automatically better, and that's not the case.

**Mr Galt:** But you don't have an actual figure.

**Ms Bishop MacDonald:** I don't have an actual figure.

**Mr Galt:** Maybe we need healthier rats to be put on the experiment.

**Ms Bishop MacDonald:** The humans fared poorly too.

**The Chair:** Thank you, Dr Galt.

**Mr Peters:** I guess if the Minister of Agriculture wanted to split a couple of agricultural commodities, you've just done it with this legislation, because it has been pretty obvious as we listen to the presentations here that there's a lot of division out there. That's something the minister can deal with.

The question I have is, we've heard from the soy people and we've heard about canola, palm oil, coconut oil. If I remember right from my days in the grocery store, you start at the beginning and it works down from there as to what's in it. Palm oil seems to come farther up the list than other products. We're hearing the argument that this is going to be good for agriculture in Ontario, that this is going to help the soybean industry in Ontario. How does the inclusion of such items as coconut and palm oil—I'm trying to understand how that helps the industry in Ontario. In your review of products, what do you find most often in the products? Is it soy and canola or is it flipped, and do we see more coconut and palm oils in products?

1720

**Mr MacDonald:** Obviously when you look at a lot of these products, what tends to appear there is the oil or oil product that tends to be least expensive at the time. You hear these stories about how we're going to use canola or we're going to use soybeans, but in fact the formulation will allow other, cheaper oils to be used, then they will be. Some of the very so-called finest margarines contain palm kernel oil. Why? To help it harden up, I suppose, but also because it's cheap.

In the gains that are being talked about in terms of products, basically what we're seeing in these is that a lot of the products just try to present themselves as dairy products and gain that way, not because they're presenting themselves in true fashion as to what they really are—you know, "butter" in big letters, and then way down at the bottom it says "flavour," and there's absolutely butter in it whatsoever; "cream," with no cream; "cheese" or "cheesy," and it's actually some sort of flavour. These people are taking advantage of another industry. That's the long and the short of it.

**Mr Kormos:** Yes, that stuff really ticks me off too, you know, the Orville Redenbacher especially, because it should say "popcorn with oil," of any number of sources.

I'm trying to listen very carefully. I'm inclined to agree that the EOPA should be stand-alone. The sense I'm getting is that you're prepared to talk about amendments to the EOPA and changes to it; is that correct? That's my understanding, that you're prepared to contemplate changes to the EOPA.

**Mr MacDonald:** Yes.

**Ms Waterton:** I think from the perspective of Dairy Farmers of Canada, we would like to see a strong federal system in place, but that hasn't happened yet. We are asking that the provinces not deregulate until that federal standard is put into place, because until that happens—

**Mr Kormos:** Sure. But having said that, are you prepared to contemplate changes to the EOPA were it treated as a stand-alone bill; to wit, amendments?

**Ms Waterton:** As long as it protects dairy terms for the labels from our perspective.

**Mr Kormos:** Because the last folks who were up here—and this was what I was trying to get from him, because my sense is there are some religious diets that prohibit milk combined with something else, but that wasn't what they were saying they were concerned about. They were concerned about manufacturing a pure oil product because that's what those religious faiths would require, so that the people practising their faith could eat what appeared to be a grilled cheese sandwich without it really being cheese. Is that particularly objectionable as long as the labelling clearly identified it in such a way that it said you're getting sliced soybean product? Would that in and of itself be particularly offensive?

**Ms Bishop MacDonald:** From a nutritional point of view it would be offensive, but—

**Mr Kormos:** So that's a different perspective.

**Ms Bishop MacDonald:** It's different, yes.

**Mr Kormos:** Are you asking the opposition parties to vote against this bill if the EOPA repeal is not in effect repealed?

**Mr MacDonald:** Yes.

**Mr Kormos:** Otherwise there's nothing about the bill the opposition parties should support?

**Mr MacDonald:** I think Ontario made the point that they support the basic food safety aspects of this. They are our members and we support them.

**Mr Kormos:** To be fair, Mr Peters should be here, but I'll tell him what you said. You bet your boots I will. Go ahead, please.

**Mr MacDonald:** As the Dairy Farmers of Ontario said, they support the health and food safety aspects of the bill, but they're objecting to having the Edible Oil Products Act repeal included in it. We support that—

**Mr Kormos:** Would you like to see the bill killed if it in fact continues to have the EOPA reference in it? Would you go that far?

**Mr MacDonald:** That's my understanding of their position, and it would be our position as well.

**The Chair:** I wish to thank the Dairy Farmers of Canada.

#### OXFORD COUNTY DAIRY PRODUCERS COMMITTEE

**The Chair:** I will call our next delegation, Oxford County Dairy Producers Committee. Welcome, sir. You have given up a fair bit of time, so we have about four minutes.

**Mr Howard Cornwell:** My name is Howard Cornwell. I represent the Oxford county dairy producers group. I am a dairy farmer. I'll just read my speech. I'm not used to reading speeches. I'm not used to writing them either, but whatever.

I farm with my family on our farm near Norwich in Oxford county. Our family came to Norwich as pioneers in 1811. They cleared the land to grow crops. I think today we would call this "slash and burn," because that's what happened to the trees in the area that I come from. Two cows were brought with these pioneers from New York state, and I expect there have been milking cows on our farm ever since. Now, seven generations later, our workforce consists of myself, three of my brothers, my son and one full-time employee. That's six families that are making a living from our farm.

Our farm is larger than most in Ontario, as we crop over 800 acres of land and we milk usually around 200 cows three times a day. Including dry cows and young stock, we have about 450 head of dairy cattle in total. We are there when most of those cows calve. We raise the calves as replacements for our milking herd. We look after them when they are sick as well as when they are healthy. Being a dairy farmer means essentially having a very large extended family. It's a very technical as well as a very caring profession. It's a big responsibility and it is a lot of work.



New technology has not bypassed dairy farms. We have several computers on our farm that not only allow us to collect, store and utilize large amounts of information but help us work more efficiently. I'm sure we would need at least one more full-time employee if we were to do without the services of the PCs we have on our farm.

As chair of the Oxford County Dairy Producers Committee, I represent the 450 producers in our county. In total, there is about \$140 million in gross milk sales annually coming to our farms. This is easily the most important farm product that Oxford produces.

We have been informed that as a result of the changes that would follow implementation of Bill 87 as it now stands, including the withdrawal of the Edible Oil Products Act, we could see a potential loss of 10% of our market. Although our farm is more efficient than average, we still do not make a 10% return on our investment. In other words, a 10% loss of our market, even over a few years, will have a huge impact on our farm and every dairy farm in this province. That's why I am here. Why should this happen?

Just a short discussion on edible oils. What are they? I guess they come from either plant or animal sources. There is a huge difference. They are not interchangeable. Milk and dairy products derived from milk are not just animal-origin fats, but they come from mammals and are a renewable resource. As I said, we milk our cows three times a day. They are also the standard that imitation products measure themselves by. Dairy products have been used by our ancestors for thousands of years. They require few, if any, additives. The dairy cow has often been referred to as the foster mother of mankind.

The Edible Oil Products Act currently prohibits adulterating dairy products with non-dairy edible oils. Thus, withdrawal of this act would allow adulteration or dilution of our dairy products. There is not a need to dilute our products with cheaper sources of fat. There may be a desire by some food processors to save a few cents and turn those cents into dollars through large-scale production using what may be foreign-sourced oil products. I feel that consumers need to be protected from the confusion this dilution and poor labelling would bring. Again, there is no need to dilute our dairy products. Dairy products may be slightly more expensive than plant-sourced oils, but they are still not expensive. Everyone can and should use real dairy products every day. If you ask a nutritionist or a dietitian, plant-based fats and dairy product fats are not the same and are not interchangeable. Nutrition means more than counting calories.

1730

If the Edible Oil Products Act is withdrawn, then we need something in place ahead of time to recognize and protect the dairy industry. Consumers also need to be treated with respect and not be misled or confused. Milk is a very unique food, and the food products made from milk need some sort of patent protection, you might say, to keep the health and quality of our product intact.

In summary, dilution is not the solution and dilution will not make Ontario a better place to live.

I have a couple of comments I jotted down listening to some of the other speakers. I'd just like to say that as well as being a dairy producer, we also grow 150 acres of soybeans every year. Virtually all of those soybeans are fed to our cows. If 10% of our cows left, there would be quite a few more beans going back into the soy market, and I don't see that there's any possible net gain to Ontario farmers by allowing dilution of dairy products. Any gain is going to come through those processors who can substitute real dairy product with cheaper sourced fats from wherever. That's where dollars are going to be made with the removal of the Edible Oil Products Act.

**The Chair:** Thank you, Mr Cornwell. You've pretty well used up the time that was left.

**Mr Peters:** Mr Chairman, we're pretty close to being on time. Is there an opportunity for us to ask a quick question each?

**The Chair:** The bells will start ringing at 10 to 6, so we have a deficit of about 10 minutes. I have to be fair to the two remaining presenters.

**Mr Peters:** He represents the dairy capital of Canada, though.

**The Chair:** Thank you, sir.

#### NIAGARA NORTH DAIRY PRODUCERS

**The Chair:** I call forward Niagara North Dairy Producers.

**Mr Kormos:** While this group is seating themselves, perhaps, to research, on the whole discussion by this last presenter of production of soybeans coexistent with dairy cattle—I'm wondering if we could get some sense, for instance, of what an acre of soybeans is in economic terms versus comparable acreage, if that's not an inappropriate way to describe dairy cattle, and the economic viability of the two in terms of job creation. There's the sense that the dairy cow industry is far more labour-intensive than growing soybeans; to wit, it creates more jobs than growing soybeans. I don't know, but I'd like to find out.

**The Chair:** I'll welcome the Niagara North Dairy Producers. I will mention we have Perth county following you, and the bells will ring at 10 to 6. So you're going to lose your audience for the last minute.

Do we have a video?

**Ms Cathy Mous:** Good evening. My name is Cathy Mous. I'm a dairy producer in north Niagara. The Niagara North Dairy Producers would like to take this opportunity to thank you for listening to our presentation. Niagara North has chosen to take a different route with our presentation. We would like to show you a short children's video produced in Niagara. The faces you see in this video are the faces of dairy farmers in Niagara. The children are children of those dairy farmers, and they are the future of our dairy industry in Niagara.

It's only a couple of minutes. Please don't be offended by its simplicity. It is a children's video.

**Mr Kormos:** That will be highly suitable.

*Video presentation.*

**Mr Rick Attema:** My name is Rick Attema, and I'm chair of the Niagara North Dairy Producers committee. We're here representing 111 dairy producers in Niagara. In 1999 we produced 40 million litres of milk, with an approximate farm gate value of \$24 million. Dairy producers in Niagara in the last nine years have decreased by 34%. In 1990 we had 197 dairy producers, compared to the 111 we have now. That's a 34% decrease, compared with a provincial decrease of about 25% in producers. My point is that Niagara is already losing more producers than the provincial average. We don't like to see the impact of this bill involving more dairy farmers leaving.

Farm numbers are declining for various reasons. Some are leaving for other types of farming. This is unfortunate, because the land in Niagara suits dairy farmers well. We are not blessed with the best soil in the province. However, we have been able to produce favourable crops with good crop rotations, manure application and other solid land stewardship practices. These practices are most easily adapted by dairy farmers.

1740

Also, farmers in Niagara face challenges of scattered urban development, and with the proposed peninsula highway coming our way in the next eight years, industrial development will also be a challenge to deal with. Direct access to our biggest trading partner with land at \$1,500 an acre—I think industry will be quick to jump on that. So those are some of the challenges that face Niagara dairy farmers. I think we have enough challenges without having to deal with the potential impact of some aspects of this bill.

As was stated by some other counties, of course we are in favour of food safety. Some of the programs we have implemented in the dairy industry to ensure that safe, high-quality dairy products reach the consumer have already been mentioned. However, we feel that repealing the Edible Oil Products Act will have a negative impact on an otherwise stable industry that provides fair returns to its producers, an industry that does not come to the government for handouts when commodity prices drop.

In closing, I have recently spoken to some of the area veterinarians, as well as some local agricultural business owners, and they are already concerned about decreasing dairy producer numbers. A further 10% reduction, as we have been told this will cause, would have serious economic implications for our county. We need to keep dairy farming strong in Niagara and cannot afford to lose the potential of \$2.4 million in lost revenue for our area agribusinesses.

**Mr Albert Fledders:** Hello. My name is Albert Fledders. I'm a 36-year-old dairy producer from Niagara. I'm currently the third-generation dairy farmer on our farm. I'm married with six young children. It's not just a job for us; it's a way of life, as for most farmers in Ontario. We take pride in the quality of the product that we produce, and we're very concerned about the re-

pealing of the Edible Oil Products Act. We're especially concerned about the confusion that it might cause to the consumer.

Right now, butter is 100% dairy product; it's 100% made from milk, as are cheese, yogourt and ice cream. There's no confusion there. If edible oils are allowed to be blended with milk, there's no standard as to what percentage has to be milk product in order to be considered milk, butter, yogourt or ice cream. What percentage would there need to be in order to be displayed in the dairy case with pure dairy products?

If a dairy product doesn't taste good to a consumer right now, we as the producers of that product are willing to hold direct responsibility for that because we're responsible for all the ingredients. But once it's blended, who's going to blame whom for what? Is it the edible oils that make it taste different, or is it the dairy product that makes it taste different?

In closing, we as dairy producers are very supportive of the need for the food safety act and have a long history of co-operation with the government, especially the Ontario government. We are certainly in favour of legislation that reflects the current state of the industry and appreciate the opportunity to change it. However, we would ask that the Ontario government offer to delay the repeal of the Edible Oil Products Act until OMAFRA and our provincial organization, whom you heard from today—the Dairy Farmers of Ontario—have had time to address the issues that we have raised and satisfactory solutions can be found. We can make this a win-win situation for all of Ontario's rural economies.

**The Chair:** I wish to thank the Niagara North dairy Producers for that presentation. We need to go to our last delegation. Thank you very much.

**Mr Kormos:** The bells aren't going to ring until five minutes to 6, Chair.

#### PERTH COUNTY DAIRY PRODUCER COMMITTEE

**The Chair:** I wish to call forward the next delegation, the Perth County Dairy Producer Committee. We'd ask you to give the committee your names, please, for the purposes of Hansard.

**Mr David Murray:** My name is David Murray.

**Mr Ray White:** My name is Ray White.

**Ms Debbie Little:** My name is Debbie Little.

**Mr Henry Koskamp:** I'm Henry Koskamp.

**The Chair:** Do you wish to proceed?

**Mr Murray:** Yes. The Perth Dairy Producer Committee would like to welcome this opportunity to provide input to this committee. There are actually five dairy producers who came from Perth county today, and we are not just dairy producers. Four of the five of us also grew soybeans on our farms this year.

We represent 509 dairy farms in Perth county, which produced 219 million litres of milk. The sales from that milk would generate \$130 million. We provide direct employment for nearly 717 dairy families and support



total employment of 2,100 workers. To replace Perth's income from milk, experts estimate that major manufacturing plants employing 2,300 workers, each making \$30,000, would have to locate in our county.

I'm going to skip some of the presentation, but we have included a section on raw milk quality and food safety. We've included this to impress upon this committee that we as grassroots dairy farmers are extremely supportive of food safety and quality standards to protect the reputation and integrity of milk and milk products.

Under the section of Bill 87 concerns, of course we do not believe that the Edible Oil Products Act should be repealed. I want to highlight some of my concerns, and I have made it somewhat personal. On a recent shopping outing with my wife, I was very amazed to see what kinds of products were in the dairy case in the supermarket. Notable was that there was more margarine than butter, there was a soya beverage in a carton looking exactly like a milk carton and there was a product called "flavoured coffee whitener," in very lovely cartons, but the same kind of cartons that cream would come in. The list of ingredients was a chemical cocktail that included hydrogenated vegetable oil but no dairy products. All of these products were packaged to make it seem that they really belonged in the dairy case. I believe that the processors of these products are trying to use the natural and wholesome image of dairy products to sell their not-so-natural, not-so-wholesome products.

I have a deep concern about any action that the government would take that threatens the viability of my farm and my industry. I would like to use the farm that my wife and I operate near Mitchell, Ontario, as an example. We both happen to be about the average age of the dairy producer in Ontario, and we hold about the average amount of quota of an average dairy farmer in Ontario. If we were to lose 10% of the dairy market in Ontario, we would immediately lose \$80,000 worth of assets—that's the quota—which are not yet fully paid for; we would lose \$25,000 a year in gross income. This is at a time when all four of our children are approaching post-secondary education. Our spending on non-essential consumer items would stop immediately, general maintenance around the farm would suffer and we certainly wouldn't be purchasing any new equipment from anywhere. We might be able to stay in business, but we would be searching our souls as to whether we could. If the negative impact were greater than 10%, there's no question we would be out, because the banks would be calling our loans.

Dairy farming is one of the more stable and viable options for agriculture in many parts of Ontario. We receive 100% of our income from the marketplace and do not rely on government financial support. What we ask from governments is that they allow us to operate our unique Canadian system within a strong and consultative legislative framework.

We take exception to the repeal of the Edible Oil Products Act being tied to the Food Safety and Quality Act. It is an issue that does not directly relate to food

safety and in our view does not need to be repealed as part of this new act. Our provincial organization, Dairy Farmers of Ontario, believes there are ways to deal with the matter, but not within the context of Bill 87.

We thank you for affording us this opportunity to come to the committee and wish to leave you with the message that any actions that negatively impact the dairy industry will directly impact upon the quality of life in rural Ontario.

**The Chair:** Thank you for the presentation. We have a couple of minutes for questions. We'll begin with the Liberal Party.

**Mr Peters:** It's not so much a question to the Perth people who are here; it's more of a comment, and I guess it's something I'd like to put back to research. We've heard a number of comments made that the hallmark of this government has been consultation. Were you consulted on the repeal of the Edible Oil Products Act?

**Mr Murray:** Personally? No.

**Mr Peters:** I'd like to know, Mr Chairman, who was consulted. We've heard this comment made. I received a letter over a year and a half ago asking for my support for the repeal of the Edible Oil Products Act, and it was obvious at that time that somebody was being consulted. I would like to know and have it provided to us who was consulted in the lead-up to this legislation. I just asked a question of the Dairy Farmers of Ontario; they weren't consulted in advance of this. It's obvious that some people within the soy industry had some information that this was being considered. Why was one group consulted and the other group wasn't consulted? I'd like to know from OMAFRA officials who was part of this pre-consultation and where the suggestion of the repeal of the Edible Oil Products Act came from.

**Mr Kormos:** Very quickly, in terms of the EOPA, you clearly believe that it should stand alone and not be a part of this bill. Are there things about the EOPA that warrant debate and perhaps some discussion in terms of amendments to meet perhaps some of the interests that you heard expressed today by the oil-based industry, if that's not unfair? Is there room there, perhaps, for some debate around amendments to the EOPA, as compared to its total repeal?

**Mr Murray:** Absolutely, but not within the food safety—

**Mr Kormos:** As you know, this bill doesn't contain a whole lot in and of itself, because it refers most things to regulation, except for the privatization of inspection, I suppose. We've heard already what farmers feel about that. So what are you saying to opposition parties? If the government doesn't accept that it should withdraw the EOPA repeal section, are you saying opposition parties should oppose the whole bill?

**Mr Murray:** Yes.

**Mr Galt:** As it relates to withdrawal of the bill, some are saying it should never be withdrawn. At least, that was a feeling I've been getting from some; others are saying not until there's a certain amount of other activity, such as federal legislation, coming in to cover that area.

Certainly, we've seen some of the labelling, and obviously that's not being dealt with very well at this point in time.

Would you be comfortable with a time frame or possibly at the time that the federal government might bring in proper legislation to control such activity?

**Mr Murray:** I think that would be an appropriate time to—

**Mr Galt:** Withdraw it.

**Mr Murray:** Withdraw or rework.

**Mr Beaubien:** I have a request to research. I'd like to know what the impact of foot-and-mouth disease was on the dairy industry in Europe.

**The Chair:** Seeing no further comments or questions, I wish to thank the Perth County Dairy Producer Committee. Seeing no further business, these hearings are adjourned.

*The committee adjourned at 1753.*





## **STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY**

### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

### **Substitutions / Membres remplaçants**

Mr Sean G. Conway (Renfrew-Nipissing-Pembroke L)

Mr Doug Galt (Northumberland PC)

Mr John O'Toole (Durham PC)

Mr Steve Peters (Elgin-Middlesex-London L)

### **Also taking part / Autres participants et participantes**

Mr Bert Johnson (Perth-Middlesex PC)

### **Clerk / Greffier**

Mr Tom Prins

### **Staff / Personnel**

Mr Avrum Fenson, research officer,  
Research and Information Services



## CONTENTS

Tuesday 20 November 2001

<b>Food Safety and Quality Act, 2001, Bill 87, <i>Mr Coburn</i> / <b>Loi de 2001</b></b>	
<b>sur la qualité et la salubrité des aliments, projet de loi 87, <i>M. Coburn</i></b> .....	J-625
Unilever Canada Ltd.....	J-625
Mr Sean McPhee	
Ms Jan Mollenhauer	
Ontario Pork; Ontario Cattlemen's Association.....	J-627
Mr Dick van der Byl	
Mr Clare Schlegel	
Ms Lilian Schaer	
Dairy Farmers of Ontario .....	J-629
Mr Gordon Coukell	
Woolwich Dairy .....	J-631
Mr Tony Dutra	
Soyfoods Canada .....	J-633
Mr Ron MacDougall	
Mr Eric Hart	
Dairy Farmers of Canada .....	J-636
Ms Sara Waterton	
Ms Helen Bishop MacDonald	
Mr Archie MacDonald	
Oxford County Dairy Producers Committee .....	J-639
Mr Howard Cornwell	
Niagara North Dairy Producers .....	J-640
Ms Cathy Mous	
Mr Rick Attema	
Mr Albert Fledders	
Perth County Dairy Producer Committee.....	J-642
Mr David Murray	

A-2 ON  
XC 14  
577

Document  
11-11-2001



J-27

J-27

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 26 November 2001

# Journal des débats (Hansard)

Lundi 26 novembre 2001

**Standing committee on  
justice and social policy**

Food Safety  
and Quality Act, 2001

**Comité permanent de la  
justice et des affaires sociales**

Loi de 2001 sur la qualité  
et la salubrité des aliments

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Monday 26 November 2001

*The committee met at 1547 in room 151.*FOOD SAFETY  
AND QUALITY ACT, 2001LOI DE 2001 SUR LA QUALITÉ  
ET LA SALUBRITÉ DES ALIMENTS

Consideration of Bill 87, An Act to regulate food quality and safety and to make complementary amendments and repeals to other Acts / Projet de loi 87, Loi visant à réglementer la qualité et la salubrité des aliments, à apporter des modifications complémentaires à d'autres lois et à en abroger d'autres.

**The Chair (Mr Toby Barrett):** Good afternoon, everyone, and welcome to the regular meeting of the standing committee on justice and social policy, November 26, 2001. On the agenda today is consideration of Bill 87, An Act to regulate food quality and safety and to make complementary amendments and repeals to other Acts. Our order of business today is clause-by-clause consideration of the bill.

Before we begin, I'll read a section from orders of the day: "That, at 4:30 pm on the day of clause-by-clause consideration ... those amendments which have not been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. The committee shall be authorized to meet beyond its normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession, with one 20-minute waiting period allowed, pursuant to standing order 127(a)."

We can now give all three parties an opportunity for any opening remarks, and then we would begin with section 1.

**Mr Peter Kormos (Niagara Centre):** With respect, sir, the time allocation motion required us to go into clause-by-clause. That's not in order.

**The Chair:** It's not in order to go to section 1 or to have opening remarks?

**Mr Kormos:** You go to section 1. You don't have opening remarks. We're doing clause-by-clause by virtue of a time allocation motion moved by the government. I didn't choose to do it this way; you guys did. Let's get

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Lundi 26 novembre 2001

moving to clause-by-clause. We don't have enough time as it is.

**The Chair:** We'll go to the Liberal Party.

**Mr Steve Peters (Elgin-Middlesex-London):** I'd just as soon get on with it, Mr Chairman. We have a lot to deal with.

**The Chair:** OK. From page 1 on our handout, we actually have an amendment before section 1, section 0.1. I would ask for a motion for this amendment.

**Mr Doug Galt (Northumberland):** I move that the bill be amended by adding the following section:

"Purposes

"0.1 The purposes of this act are to provide for,

"(a) the quality and safety of food, agricultural or aquatic commodities and agricultural inputs;

"(b) the management of food safety risks; and

"(c) the control and regulation of regulatable activities."

If I might comment, Mr Chair, the new section is being added to describe the general purpose of the bill. The corresponding amendment would remove the phrases in section 1, Definitions, "regulatable activity." In section 2, the description of the regulation-making powers will restrict the scope of the bill to that which affects or ensures food safety and quality. The general purpose clause addresses the other related purposes of the statute to manage food safety risks and to be able to do things that are currently done under existing regulations that are incidental to the regulation of food for safety and quality purposes.

**The Chair:** Any debate?

**Mr Kormos:** I want to speak to this. The amendment in and of itself has merit. I particularly note the definition of purposes as being, among other things, "the quality and safety of food ... the management of food safety risks; and the control and regulation of regulatable activities."

The issue for the New Democratic Party is in particular section 44 of the bill, which repeals the Edible Oil Products Act. I heard the input from dairy farmers, by way of their national organization and their provincial organization, and from small groups of dairy farmers from across the province. I found their arguments incredibly convincing.

I'm simply going to indicate to you now that if this bill was to be about the quality and safety of food, if it was to be about the control and regulation of regulatable



activities, if it was really to be about the management of food safety risks, then section 44, which is the repeal of the Edible Oil Products Act, would be withdrawn from this bill.

I simply want to indicate quite clearly here and now that we're not going to get through all these amendments. The government has forced this to be debated in a period of an hour—no, 35 minutes; it's five to 4 now. The government has 105 amendments. None of them are not serious. They warrant thorough discussion. I'm incredibly disappointed that we won't be able to debate it, and it's why I want to indicate right here and now that New Democrats will not support this bill if this bill continues to contain section 44, which is the repeal of the Edible Oil Products Act. We feel strongly that that section should be withdrawn, that the Edible Oil Products Act should be maintained as a piece of legislation. We heard from any number of people who said they were prepared to talk about that act in and of itself and find room for movement if movement has to be done to accommodate perhaps some of the soybean or other oil-producing people, but I think it's total repeal attacks the quality and safety of food.

We saw the ineffectiveness of the federal advertising guidelines. It attacks public safety; we heard strong and convincing arguments about the lack of healthfulness of the oil products that are used in a large number of consumable commodities, and indeed that Edible Oil Products Act regulates an industry, the dairy industry, the milk production industry and related products, which is an integral part of this province's history, of this province's economy. Where I come from, like in every other part of this province, dairy farmers work incredibly hard providing safe, quality food for the people in their communities and across this province.

I just want to make it quite clear: if section 44 is still in this bill, New Democrats are voting against it, lock, stock and barrel.

**Mr Peters:** We have 100-odd amendments in front of us, and the majority of these are just housekeeping matters that certainly we'd be in a position to support as well. I'd like to come back to section 44 as well. I would hope we could quickly—I prefer to see the committee get right to the meat of the issues that are of utmost importance to this committee, and 44 is the one.

It was obvious, when we heard the presentations, that the grains and oilseeds industry—the soy producers, in particular—had had some input into this. And it was obvious, in speaking to the Dairy Farmers of Ontario and some of the individual county organizations, that they did not have input and that the repeal of the Edible Oil Products Act came out of the blue for them. If the minister wanted to pit commodity group against commodity group, he's certainly done that with the inclusion of the repeal under section 44.

As I say, we certainly would be supportive of the majority of these amendments, and let's deal with them quickly. But I would like us very much to get to the issue of section 44.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** For the record—and I'm going to be very brief—I did request that research provide us some information with regard to impact of foot and mouth disease on the dairy industry in Europe. I think everyone has the documentation in front of them. I would flag the issues dealing with action taken, the economic impact in the UK and the dairy sector. Those are the three key sections. There's also another report dealing with the comparison of soy and dairy production in Ontario. I think the documents will speak for themselves. They were done by the research branch. I just wanted to point this out to the committee members and put this on the record.

**The Chair:** Any further discussion? Are members ready to vote on government motion number 1? All those in favour? Opposed? I declare this amendment carried. Government motion number 2.

**Mr Galt:** I move that clause (c) of the definition of "agricultural or aquatic commodity" in section 1 of the bill be struck out and the following substituted:

"(c) plants, plant products, animals, animal products and other agri-food products that, subject to a determination made in accordance with the regulations if applicable, are unfit for human consumption, pose a risk to or otherwise affect food quality or safety, directly or indirectly."

This definition of "agricultural or aquatic commodity" is being redrafted to delete the words "inedible or contaminated" and to clarify that animals or plants that enter the food chain indirectly can be regulated as commodities.

**The Chair:** Any further discussion? Seeing no further discussion, are members ready to vote? All those in favour? Those opposed? Amendment carried.

Page 3.

**Mr Galt:** I move that the definition of "agricultural input" in section 1 of the bill be amended by inserting "or an organism" after "a substance" and by inserting "and organisms" after "other substances."

The definition of "agricultural input" in section 1 is being amended to include "organisms" as well as "substances" to clarify that the definition also covers living things that are used in the production of plants and animals.

**The Chair:** Any discussion?

**Mr Kormos:** Yes. For example?

**Mr Galt:** Looking further down the road, an example might be a fermentation process that's producing a food. There might be organisms there. That's an example that comes to mind kind of quickly, but it's looking forward to have the act ready.

**The Chair:** Further discussion? Are members ready to vote? All those in favour of this government motion on page 3? Those opposed? Carried.

Page 4.

1600

**Mr Galt:** Under section 1, definition of "certificate," I move that the definition of "certificate" in section 1 of the bill be struck out and the following substituted:

“certificate” means a certificate described in clause 11(f), (h), (k) or (w); (‘certificat’).”

If I may, Chair, the amendment to the definition of “certificate” in section 1 is a technical one to include reference to certificates described in the clauses.

**The Chair:** Further discussion? Are the members ready to vote? All those in favour of the motion on page 4? Those opposed? The motion is carried.

We have a motion before us on page 5.

**Mr Galt:** Under section 1, definition of “fish,” I move that clauses (b) and (c) of the definition of “fish” in section 1 of the bill be struck out, and the following substituted:

“(b) shellfish, crustaceans, fresh water and marine animals and any parts of shellfish, crustaceans and those animals, and

“(c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans, fresh water and marine animals; (‘poissons’).”

The definition of “fish” in section 1 is being redrafted to clarify that freshwater animals as well as marine animals can be regulated as “fish” under the act.

**Mr Kormos:** I’m just asking why that’s necessary. “Marine” implies water, be it freshwater or saltwater. Down in Port Colborne, there’s a freshwater lake, Lake Erie. We call it a marina. You’re familiar with Lake Erie. Seriously, does “marine animals” imply only saltwater fish? I see what the addition is, but it just—

*Interjection.*

**Mr Kormos:** Where? I don’t understand.

**Mr Galt:** I’d have to ask for some clarification and some legal advice on that particular one, to be specific for you.

**Mr Kormos:** It matters not. It’s just—

**Mr Galt:** It’s my understanding that this increases the clarification of “fish.” Would you like further clarification on that?

**Mr Kormos:** I suspect you’ll get it to me tomorrow or the day after.

**Mr Galt:** I can get it for you right now, if we can call a lawyer forward.

**Mr Kormos:** Yes, please. You understand I’m a simple person, and that’s my interpretation. “Marine” means from the water. You can understand why I’m asking.

**Ms Dagny Ingolfssrud:** Yes. I’m Dagny Ingolfssrud, from the ministry’s legal branch. I’ve been involved in the drafting of this bill.

Our concern, Mr Kormos, is to ensure that this bill is not interpreted as only including saltwater animals in the term “marine animals.” That distinction can be drawn. We’re trying to mirror some federal legislation that makes these distinctions as well. The purpose here is to ensure that both marine types of animals, saltwater and freshwater animals, could be regulated as “fish” under this act.

**Mr Kormos:** Thanks kindly.

**The Chair:** Any further questions or discussion? Are the members ready to vote on the motion on page 5?

All those in favour? Those opposed? I declare the motion carried.

We have a motion on page 6.

**Mr Galt:** I move that clause (a) of the definition of “food” in section 1 of the bill be struck out and the following substituted:

“(a) milk and milk products as defined in section 1 of the Milk Act, except as ingredients of food or except in the circumstances and for the purposes specified in the regulations.”

The proposed amendment will allow for exemptions to be created by regulation from the exclusion of milk and milk products under the Milk Act, from the definition of “food.” The exceptions in the regulations to the exclusion will be to address the food safety risk purposes.

**The Chair:** Further discussion?

**Mr Kormos:** I’m a little concerned, because what this is talking about again is milk as a part of a bigger package. Of course, that takes me right back to the EOPA debate that we looked at last week where the oil products people, big companies like Lever Brothers, want to use a little bit of milk product in their products and mix it in with oil products. Is this amendment accommodating them? The act doesn’t include milk, but does include milk when it is integrated into another product. Right away I’m thinking of, again, the 20-80 quasi-butter spread, vegetable spread. Is this designed to accommodate that kind of product?

**Mr Galt:** No. I can explain, Mr Chair, if you don’t mind. What it has to do with is risk management, following through on where the products come from or may have gone once a problem has been identified. It is something that I understand industry has asked for. As far as standards and quality, that’s still under the Milk Act. This has to do with risk management and the follow-through on that.

**The Chair:** Any further discussion? Are members ready to vote?

**Mr Peters:** Please excuse my ignorance; it’s the first time I’ve sat in a hearing with clause-by-clause. How do you request a recorded vote? Do you just request a recorded vote?

**The Chair:** Yes. When I ask are the members ready to vote, at that point any committee member could ask for a recorded vote.

**Mr Peters:** I’m asking for a recorded vote, please.

**The Chair:** We are voting on a government motion on page 6.

#### Ayes

Beaubien, Galt, Kormos, Martiniuk, Molinari.

#### Nays

Bryant, Peters.

**The Chair:** I declare the motion carried.



**Mr Galt:** I move that clause (b) of the definition of “food safety risk” in section 1 of the bill be amended by inserting “or conveyance” after “premises” in the portion before subclause (i).

**The Chair:** Any further discussion on this motion on page 7?

**Mr Galt:** Just to comment that this is being amended to correct a technical deficiency by adding “or conveyance” after “premises” in the portion before subclause (i).

**The Chair:** Any further discussion? Are the members ready to vote?

Government motion, page 7: all in favour? Those opposed? I declare the motion carried.

We have a motion on page 8.

**Mr Galt:** I move that subclause (b)(ii) of the definition of “food safety risk” in section 1 of the bill be struck out and the following substituted:

“(ii) may, by any means, directly or indirectly, in whole or in part, affect the safety for human consumption of the food or agricultural or aquatic commodity that is designated in the regulations.”

If I may comment, this definition of “food safety risk” is being redrafted to clarify that other foods, commodities, inputs, environmental conditions or a condition of a premise or conveyance that have a harmful effect on designated foods or commodities are themselves considered a food safety risk, however and wherever the harmful effect may occur in the food chain.

**The Chair:** Any further discussion? Are the members ready to vote? Government motion on page 8: all those in favour? Those opposed? I declare the motion carried.

1610

**Mr Galt:** I move that the definition of “minister” in section 1 of the bill be struck out and the following substituted:

“minister” means the Minister of Agriculture, Food and Rural Affairs or whatever other member of the executive council to whom the administration of this act is assigned under the Executive Council Act.”

This definition of “minister” in section 1 was amended to clarify which minister is responsible for the administration of this act.

**Mr Kormos:** I find this offensive, because it is suggesting that this act at some point could be assigned to somebody other than the Minister of Agriculture. It could be assigned to the Minister of Economic Development, who might be very responsive to the industrial interests which are advocating on behalf of oil-based products—last week, Lever Brothers. It could be assigned to the Minister of Finance. It could be assigned to the Minister of Culture. This is absurd and it is offensive. I think it sets a very dangerous precedent. I want the Ministry of Agriculture of any given government to be administering those bills that immediately affect agriculture here in the province of Ontario.

I will be asking for a recorded vote. I’m going to be voting against this. My opposition and concern could be argued as being without any base because we haven’t seen that happen. But why would the amendment con-

template that when the farmers I talked to, be they happy or unhappy with the Ministry of Agriculture of the day, at the end of the day have some high regard for OMAFRA, for the ministry and its expertise. These same farmers then are going to have a gang of bureaucrats from, let’s say—oh I can’t think for the life of me—the Ministry of Tourism and Recreation administering legislation that impacts on them? Sorry, no.

**Mr Galt:** My understanding here is that in the executive council there is a backup minister for every minister. If the minister is away or sick or ill for whatever reason, this is clarifying that so that it will be in order that another minister might act on behalf of that minister on that day. It is not meant that some other minister is totally going to take over the ministry and run it. But certainly there are times when—look back at something like September 11—dear knows what might happen to someone. This clarifies the opportunity to ensure that there will be somebody to cover for the minister if he or she is not available at the time.

**Mr Kormos:** With all due respect to John Baird, I don’t want him, as Minister of Community and Social Services, telling the farmers where I come from how to run their affairs.

**The Chair:** Any further discussion? Are the members ready to vote?

**Mr Kormos:** Recorded vote, please, sir.

**The Chair:** This is the motion on page 9.

### Ayes

Beaubien, Galt, Martiniuk, Molinari.

### Nays

Bryant, Kormos, Peters.

**The Chair:** I declare the motion carried.

Government motion, page 10.

**Mr Galt:** I move that the definition of “person” in section 1 of the bill be struck out.

Just to comment, the definition of “person” in section 1 of the bill will be struck out, as it will cause potential problems in the area of enforcement if it remains in the bill.

**The Chair:** Any further discussion? All those in favour? Those opposed? The motion is carried.

Government motion, page 11.

**Mr Galt:** I move that the definition of “regulatable activity” in section 1 of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

“‘regulatable activity’ means any of the following activities.”

The definition of “regulatable activity” in section 1 of the bill will be amended to delete the words “that affects or could affect the quality or safety of food, agriculture, aquatic commodities or agricultural inputs as this concept

will be addressed in the new purpose clause in the new section 0.1 of the bill.

**The Chair:** Further discussion? Are the members ready to vote on this motion? All those in favour? Those opposed? I declare this motion carried.

Motion on page 12.

**Mr Galt:** I move that paragraph 2 of the definition of “regulatable activity” in section 1 of the bill be struck out and the following substituted:

“2. The growing, harvesting or other preparation for consumption of plants and micro-organisms that may be used as food.”

Paragraph 2, the definition of “regulatable activity,” is being redrafted to add micro-organisms to ensure that the growing and harvesting of these are covered in addition to plants.

**The Chair:** Further discussion? Are the members ready to vote? All those in favour of the motion on page 12? Those opposed? The motion is carried.

Page 13, government motion.

**Mr Galt:** I move that paragraph 4 of the definition of “regulatable activity” in section 1 of the bill be struck out and the following substituted:

“4. The collection, buying, receiving, possessing, possessing for prescribed purposes, identification, branding, handling, storage, moving, transportation, processing, preparation for use, grading, packing, packaging, marking, labelling, advertising, marketing, displaying, giving, selling by any means including on consignment, offering for sale, distribution, disposal or destruction of food, agricultural or aquatic commodities or agricultural inputs.

“4.1 The using of agricultural inputs.”

The definition of “regulatable activity” is being amended to add the additional activities that need to be covered by the legislation: possessing, possessing for prescribed purposes, giving, selling by any means including on consignment. The using of things only applies to agricultural inputs. The use of food or commodities is not a regulatable activity under the act.

Paragraph 4.1 will clarify that use of agricultural input is a regulatable activity. This is already contemplated in the regulation-making powers in clause 11(r) of the bill.

**The Chair:** Any further discussion? Are the members ready to vote? All in favour? Those opposed? Motion carried.

Motion on page 14.

**Mr Galt:** I move that the definition of “regulated activity” in section 1 of the bill be struck out and the following substituted:

“‘regulated activity’ means a licensed activity or an activity that is subject to the regulations made under section 11; (‘activité réglementée’).”

The definition of “regulated activity” in section 1 is being amended by removing the words “regulatable activity that is,” and adding the words “an activity,” after the words “licensed activity.” The newly drafted definition will now cover all activities that could be the subject of regulations under section 11, not just those that will fall under the list of regulatable activities.

**The Chair:** Any further discussion?

**Mr Kormos:** It’s 4:17 and we’re still on section 1. We’re at government motion number 14 of 106 government motions. I just want folks to understand that the opposition parties—I’m sure both opposition parties—would dearly love to talk about some very significant sections of this bill rather than vote on what is, in effect, the government cleaning up after the fact because the bill wasn’t drafted properly in the first place. But at 4:30 all discussion around any amendment or any section of the bill is going to terminate. The opposition members will not have an opportunity to raise their concerns about amendments or about sections in the bill. That wasn’t the opposition members’ choosing. It was the government that forced this. The opposition members wanted to be able to debate this bill fully. It warrants debate. It impacts on far too many people, and it impacts significantly on the agricultural industry in this province.

I just want it to be made very, very clear right now that the time allocation motion, the closure motion, that is forcing this bill through committee with this kind of haste was the doing solely of the government, and that opposition parties opposed it, oppose it now, and I’m confident we’ll continue to oppose it in the future. It’s a shame.

**The Chair:** Any further discussion? Are the members ready to vote? You’re voting on the motion on page 14. All those in favour? Those opposed? Motion carried.

Motion on page 15.

**Mr Galt:** I move that section 1 of the bill be amended by adding the following definition:

“‘regulations’ means the regulations made under this act, unless the context requires otherwise.”

A new definition is being added to clarify that the term “regulation” used in the act is in reference to a regulation under the act, unless the context indicates otherwise.

**The Chair:** Any further discussion?

1620

**Mr Kormos:** This is just plain weird. This says where the act makes reference to regulations, it means a regulation under the act—that’s what all of us understand it to mean—unless it’s not a regulation under the act by virtue of the context. This is again pretty unprecedented stuff. It means sometimes it’s a regulation, sometimes it isn’t. I can’t in good faith vote for this at all, and I’m asking for a recorded vote.

**The Chair:** Any further discussion? Are members ready to vote? This will be a recorded vote.

**Ayes**

Beaubien, Bryant, Galt, Martiniuk, Molinari, Peters.

**Nays**

Kormos.

**The Chair:** Motion carried.

This completes the amendments for section 1.



Shall section 1, as amended, carry? All those in favour? Those opposed? Section 1 carries.

Amendments under section 2: we have a motion on page 16.

**Mr Galt:** I move that subsection 2(3) of the bill be struck out and the following substituted:

"Powers

"(3) A director appointed by the minister shall have those powers of an inspector that are specified in the appointment, but not the duties of an inspector."

Just a comment, Chair. This is being redrafted to provide that "A director appointed by the minister shall have" all the "powers of an inspector that are specified in the appointment, but not the duties of an inspector." The newly drafted subsection 2(3) will allow the minister to select the powers that should apply rather than the director automatically having all the powers of an inspector. Amendments to section 38 will also address the powers of directors appointed by a delegate in a similar manner.

**The Chair:** Further discussion? Are members ready to vote? All in favour? Those opposed? Motion carried.

That was the sole amendment to section 2. Shall section 2, as amended, carry? Carried.

Section 3: shall section 3 carry? Carried.

Section 4: there's a motion on page 17.

**Mr Galt:** I move that subsection 4(2) of the bill be struck out and the following substituted:

"Right to hearing

"(2) A director shall not refuse to issue a licence to an applicant unless,

"(a) before refusing to issue the licence, the director serves a written notice on the applicant stating that the applicant may request a hearing by the director within the prescribed time; and

"(b) the director has held the hearing if the applicant requests one within the prescribed time."

Chair, if I may, this is being redrafted to provide that a director shall not refuse to issue a licence to an application unless, before refusing, the director offers the applicant a hearing and, where the applicant accepts, conducts a hearing. The director can proceed to refuse a licence without a hearing if the hearing is offered and not accepted.

**The Chair:** Further discussion? Are members ready to vote? All those in favour? Those opposed? This motion carries.

We're on the motion on page 18.

**Mr Galt:** I move that subsection 4(3) of the bill be amended by striking out "specified" and substituting "prescribed."

As a comment, this is a technical amendment to replace the word "specified" with the word "prescribed" to make it clear that clause 40(a) of the bill applies, which allows the minister to make regulations prescribing to fees.

**The Chair:** Any further discussion? Are members ready to vote? All those in favour? Those opposed? Motion carried.

Page 19.

**Mr Galt:** I move that subsection 4(4) of the bill be amended by adding at the end "and a director may impose those conditions."

That's a technical amendment that clarifies that the director has the authority to impose conditions on a licence by adding and a director may impose such conditions at the end of subsection 4(4).

**The Chair:** Any further discussion? Are members ready to vote? All those in favour? Those opposed? The motion carries.

That concludes the amendments to section 4. Shall section 4, as amended, carry? Carried.

Section 5: we have a motion on page 20.

**Mr Galt:** I move that subsection 5(1) of the bill be amended by striking out "after a hearing."

That is being amended by striking out "after a hearing" so that the director only has to offer a hearing before refusing to renew a licence or before suspending or revoking a licence. The director will not have to hold a hearing before refusing to renew a licence or before suspending or revoking a licence if a hearing is offered but not accepted. This may reduce the number of hearings held and allow the director to focus on the hearings requested.

**The Chair:** Further discussion? Are members ready to vote? All those in favour? Those opposed? Motion carried.

**Mr Galt:** I move that section 5 of the bill be amended by adding the following subsection:

"Right to hearing

"(1.1) A director shall not refuse to renew a licence or suspend or revoke a licence under subsection (1) unless,

"(a) before doing so, the director serves a written notice on the licensee stating that the licensee may request a hearing by the director within the prescribed time; and

"(b) the director has held the hearing if the licensee requests one within the prescribed time."

If I may comment, this will provide that a director shall not refuse to renew a licence or suspend or revoke a licence to a licensee unless, before doing so, the director offers the licensee a hearing and, where the licensee accepts, conducts the hearing; the director can proceed to refuse to renew the licence or revoke or suspend it without a hearing if the hearing is offered and not accepted. This may reduce the number of hearings held and allow the director to focus on the hearings requested.

**Mr Peters:** Here we are, one fifth of the way through. We're coming up on 4:30 now, and further discussion on probably the most important issue, the repeal of the Edible Oil Products Act, isn't going to occur around this table. I think that's extremely disappointing, because this is an issue that has some very real and serious ramifications on the dairy industry in this province. This government right now is just prepared to ram these amendments through. As I said earlier, the majority of them are just of a housekeeping nature, but we're not

going to have the opportunity to discuss the really important one today.

**Mr Kormos:** Or ever.

**Mr Peters:** Or ever, for that matter, is right. I think it's again appropriate to go on the record that the Liberal Party firmly believes that this repeal of the Edible Oil Products Act should not be happening. It is an irresponsible move to go down this road. Seeing that we are at 4:30 and we won't have a chance to comment when we eventually get to amendment 104, I just felt it was appropriate to go on the record now.

**The Chair:** Before we go to the next stage, for the information of the committee, the motion on page 104 is out of order. It's a motion that requests that section 44 be deleted. The proper course of action is to vote against a section rather than to make a motion.

**Mr Kormos:** We're not going to have the chance to delete the section anyway.

**The Chair:** I just wanted to draw that to the attention of the committee.

**Mr Peters:** We still stand behind that, that section 44 should be deleted. If there's an opportunity to amend it to make it palatable to the committee, we're certainly prepared to do that.

1630

**The Chair:** You would have time to do that, I would think.

I wish to ask the members if they're ready to vote on the motion on page 21. Are the members ready to vote? All those in favour? Those opposed? The motion is carried.

It now being 4:30, as I indicated earlier, those amendments which have not been moved shall be deemed to have been moved, and without further debate or amendment, the Chair will put every question necessary to dispose of all remaining sections of the bill and any amendments thereto.

We're now on page 22. All in favour? Those opposed? Carried.

Motion on page 23: all in favour? Those opposed? Carried.

That completes the motions for section 5. Shall section 5, as amended, carry? Carried.

On section 6, I see no amendments or motions. Shall section 6 carry? Carried.

Under section 7, there's a motion on page 24. All those in favour? Those opposed? Carried.

That's the only amendment to section 7. Shall section 7, as amended, carry? Carried.

Section 8, the motion on page 25: all those in favour? Those opposed? Motion carried.

Page 26: all those in favour? Those opposed? Carried.

Page 27: all those in favour? Opposed? Carried.

That completes amendments to section 8. Shall section 8, as amended, carry? Carried.

Under section 9, there's an amendment on page 28. All those in favour? Opposed? Carried.

Page 29: all those in favour? Opposed? Carried.

That concludes amendments to section 9. Shall section 9, as amended, carry? Carried.

On section 10, I see no amendments. Shall section 10 carry? Carried.

Under section 11, on page 30, we have a motion. Shall the motion on page 30 carry? Opposed? Carried.

Page 31: all in favour? Opposed? Carried.

Page 32: all in favour? Opposed? Carried.

Page 33: all those in favour? Opposed? Motion carried.

Page 34: all in favour of the motion? Those opposed? Motion carried.

Turn to page 35. All those in favour? Opposed? Motion carried.

Page 36: all those in favour? Opposed? Motion carried.

Page 37: all those in favour? Opposed? That motion is carried.

There's a motion on page 38. All those in favour? Those opposed? It's carried.

The motion on page 39: all those in favour? Opposed to the motion? That motion carries.

That concludes the amendments to section 11. Shall section 11, as amended, carry? Carried.

Section 12: there is a motion on page 40. All, those in favour of the motion?

**Mr Kormos:** Recorded vote.

**The Chair:** There's a call for a recorded vote, so we will stand this motion down and deal with it at the end.

The next motion is on section 14.

**Mr Kormos:** What about section 13?

**The Chair:** We have no amendments to section 13. Shall section 13 carry? Carried.

Section 14: we have a number of motions, beginning with page 41. All those in favour? Those opposed? Carried.

Page 42: those in favour of this motion? Those opposed to the motion? Carried.

Page 43: those in favour? Those opposed? Carried.

Page 44: those in favour? Those opposed? Carried.

The motion on page 45: those in favour? Opposed? Carried.

On page 46 we have a motion. Those in favour? Those opposed? The motion carries.

Page 47: those in favour? Those opposed? The motion carries.

That concludes amendments to section 14. Shall section 14, as amended, carry? Carried.

Section 15, a government motion on page 48: those in favour? Opposed? Carried.

Page 49: those in favour? Opposed? It's carried.

That concludes section 15. Shall section 15, as amended, carry? Carried.

On page 50, a government motion to section 16: all in favour? Opposed? It's carried.

Page 51: all those in favour? Opposed? That carries.

Page 52: all those in favour? Opposed? That carries.

Page 53: all those in favour? Opposed? That carries.

Shall section 16, as amended, carry? Carried.



We now turn to page 54, a government motion.

**Mr Kormos:** On a point of order, Mr Chair: Is 54 the 12-page amendment? That's 12 pages of one amendment that aren't going to be debated or discussed. Man.

**The Chair:** Shall this motion carry? Opposed? The motion carries.

1640

Government motion on page 55: all those in favour? Opposed? This motion carries.

Page 56: all those in favour? Those opposed? Carried.

Page 57: those in favour? Those opposed to the motion? Carried.

Page 58: those in favour? Opposed? It carries.

Page 59: those in favour? Opposed? It's carried.

That concludes amendments to section 17. Shall section 17, as amended, carry? Carried.

Section 18: a motion on page 60. Shall the motion carry? All those in favour? Those opposed? Carried.

Page 61: all those in favour? Opposed? Carried.

That concludes section 18. Shall section 18, as amended, carry? Carried.

We now turn to page 62, a government motion. Those in favour? Opposed? Carried.

We have a motion on page 63. Those in favour? Opposed? Carried.

We'll put the question on section 19. Shall section 19, as amended, carry? Carried.

Section 20: I see no amendments. Shall section 20 carry? Carried.

Section 21 does have amendments, beginning on page 64. All those in favour? Opposed? Carried.

Page 65: those in favour? Opposed? Carried.

**Mr Galt:** On a point of order, Mr Chair: Could you just check the record? I don't know how much significance it may have, but I think we approved section 16 before we passed a motion in section 16. Maybe the clerk could double-check on that.

**Mr Kormos:** We're in time allocation. You've got to do it by the rules.

**The Chair:** I'll ask the clerk just to clarify that for the record here.

**Clerk of the Committee (Mr Tom Prins):** We did the amendments on section 16, then we passed section 16, and then we went to amendment 54, the new sections 16.1 to 16.6, and then we proceeded to section 17.

**Mr Galt:** They're new sections, so that's in order.

**Clerk of the Committee:** That's right.

**Mr Galt:** Thank you. Just a procedural check.

**The Chair:** We now need to vote on section 21, as amended. Shall section 21, as amended, carry? Carried.

Section 22 has an amendment on page 66. All those in favour? Opposed? That's carried.

Shall section 22, with this amendment, carry? Carried.

Shall section 23 carry? Carried.

Section 24: there's a government motion on page 67. All those in favour? Opposed? Carried.

Page 68: all those in favour? Opposed? Carried.

Page 69: those in favour? Opposed? Carried.

Page 70: we have a motion. Those in favour? Those opposed? Carried.

That concludes section 24. Shall section 24, as amended, carry? Carried.

Section 25 has a motion on page 71. Those in favour? Opposed? Carried.

Shall section 25, with this amendment, carry? Carried.

Section 26: on page 72 there's a motion. Those in favour? Opposed? That's carried.

Page 73: in favour of this motion? Opposed? The motion carries.

Page 74: there's a motion. All those in favour? Those opposed? It's carried.

Page 75 has a motion. Those in favour? Opposed? That's carried.

The motion on page 76—

**Mr Kormos:** Good grief, Chair. This allows for tracking devices to be installed on people's vehicles or planted inside materials so that they could be tracked à la FBI-CIA without any of the protections that the Criminal Code would normally apply. It is incredible, that sort of intrusive, investigative procedure. That is regrettable.

**The Chair:** It's not a point of order, Mr Kormos.

**Mr Kormos:** I didn't say it was a point of order. I was expressing my shock.

**The Chair:** Before we vote on page 76, I would ask the question with respect to section 26. Shall section 26, as amended, carry? Carried.

The motion on page 76: all those in favour?

**Mr Peters:** Mr Chairman, I respectfully request a recorded vote on motion 76, please.

**The Chair:** A recorded vote, so we stand this one down as well.

Section 27: there are no amendments. Shall section 27 carry? Carried.

Section 28: we have an amendment on page 77. All those in favour? Those opposed? It's carried.

Shall section 28, with this amendment, carry? Carried.

Section 29: there's a motion on page 78. All those in favour? Those opposed? It's carried.

Shall section 29, with this amendment, carry? Carried.

Section 30: I see a number of amendments on page 79. Those in favour? Those opposed? Carried.

Page 80: those in favour of this motion? Those opposed? It's carried.

Page 81: all those in favour? Those opposed? This is carried.

Page 82: those in favour of this motion? Those opposed? It's carried.

Page 83: those in favour? Those opposed? It's carried.

Shall section 30, with these amendments, carry? Carried.

1650

Section 31: I see no amendments. Shall section 31 carry? Carried.

Section 32: I see no amendments. Shall section 32 carry? Carried.

Section 33: there's an amendment on page 84. All those in favour of that amendment? Those opposed? Carried.

Section 33: there's an amendment on page 85. Those in favour? Those opposed? Carried.

Shall section 33, as amended, carry? Carried.

Section 34: I see no amendments. Shall section 34 carry? Carried.

Page 87, a government motion: those in favour?

Actually, the clerk has asked that we reverse the order of pages 87 and 86.

**Mr Kormos:** With all due respect to the clerk, the clerk has asked, but what's the point? Number 86 comes before 87.

**Clerk of the Committee:** The Liberal amendment just deletes the section. If we passed that first, the government motion would be nonsensical. It's that it be struck out and replaced. Hypothetically, if the government motion passes, the Liberal motion could still strike it out. If the Liberal motion passed first, there's nothing for the government motion—

**Mr Kormos:** Do you know something that I don't, that the Liberal motion has a chance of winning? Should I be betting money here? Should I be going to the pari-mutuel window?

**The Chair:** If we could turn to page 87, those in favour of the motion—

**Mr Kormos:** Recorded vote, please.

**The Chair:** We have to stand page 87 down. The clerk has advised that we should stand down page 86 as well.

Section 36 has no amendments. Shall section 36 carry? Carried.

Section 37: there's one amendment on page 88. Those in favour? Those opposed? It is carried.

Shall section 37, as amended, carry? Carried.

There's a motion on page 89. All those in favour of this motion? Those opposed? It's carried.

Page 90: we have a motion. Those in favour? Those opposed? It's carried.

Page 91: we have a motion. Those in favour? Those opposed? It's carried.

Shall section 38, as amended, carry? Carried.

Section 39: there are several amendments. The first one's on page 92. All those in favour? Those opposed? It's carried.

Page 93: those in favour? Those opposed? It's carried.

Page 94: those in favour? Those opposed. That carries.

Shall section 39, as amended, carry? Carried.

If we turn to page 95, there's a government motion. Those in favour? Those opposed? This amendment carries.

Shall section 39.1, as amended, carry? Carried.

Section 40 has a government motion on page 96. Those in favour? Those opposed? Carried.

Page 97: those in favour? Those opposed? That carries.

Shall section 40, as amended, carry? Carried.

Section 41 has amendments beginning on page 98. Page 98: those in favour? Those opposed? Carried.

Page 99: those in favour? Those opposed? It's carried.

Page 100: those in favour? Opposed? It carries.

Page 101: those in favour? Those opposed? That's carried.

Shall section 41, as amended, carry? That's carried.

Section 42: there is an amendment on page 102. Those in favour? Those opposed? It's carried.

Shall section 42, as amended, carry? Carried.

Now we're at section 42.1, and there is an amendment found on 103. Shall this motion carry?

**Mr Peters:** Mr Chair, I'd ask that this motion be stood down and a recorded vote taken, please.

**The Chair:** A recorded vote on page 103. We'll stand that one down.

Section 43: there are no amendments. Shall section 43 carry? Carried.

We indicated earlier that the amendment on page 104 was out of order.

**Mr Peters:** Could you explain why, Mr Chair?

**The Chair:** I'd ask the clerk to better enable us to understand why it's out of order.

**Clerk of the Committee:** The proper procedure, if you want to take a section out of a bill, is to vote against it. You don't move a motion to vote against it; you simply vote no.

**Mr Peters:** I just want to be on the record that we oppose this.

**The Chair:** As I understand it, we will have a vote, which would give you the opportunity to be on the record.

**Mr Peters:** I ask that a recorded vote be taken on section 44 then, please.

**The Chair:** So we'll have a recorded vote. We would then stand this one down.

We turn to section 45: there are no amendments. Shall section 45 carry? Carried.

Section 46: I see no amendments. Shall section 46 carry? Carried.

Section 47: on page 105 we have a government motion. Those in favour? Those opposed? That's carried.

Shall section 47, as amended, carry? Carried.

We go to section 48: there is an amendment on page 106. Those in favour? Those opposed? It's carried.

**Mr Peters:** I ask that a recorded vote be taken.

**The Chair:** We've gone past that stage.

I'll call the vote on section 48. Shall 48, as amended, carry? Carried.

Section 49 has no amendments. Shall section 49—

**Mr Kormos:** Recorded vote, please.

**The Chair:** A recorded vote, so we will stand down section 49, the short title.

We'll now go back and do those requests for recorded votes.

**Mr Kormos:** On calling the first vote, I request a 20-minute adjournment as per the rules, please.

**The Chair:** OK. This committee will be recessed for 20 minutes.



*The committee recessed from 1702 to 1723.*

**The Chair:** Welcome back, committee.

A number of items were stood down. There is an amendment on page 40, a government motion. This is a recorded vote.

**Ayes**

Beaubien, Bryant, Galt, Martiniuk, Molinari, Peters.

**Nays**

Kormos.

**The Chair:** I declare that amendment carried.

Shall section 12, as amended, carry? Carried.

We now turn to page 76, a government motion to add a new section. This is also a recorded vote.

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** Motion carried.

We now turn to page 87, a government motion. This will be a recorded vote.

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** Motion carried.

Now we turn to page 86, a Liberal motion.

**Mr Kormos:** Mr Chair, is this in or out of order?

**The Chair:** This Liberal motion was in order, so we're voting on the Liberal motion on page 86, a recorded vote.

**Ayes**

Bryant, Peters.

**Nays**

Beaubien, Galt, Kormos, Martiniuk, Molinari.

**The Chair:** The motion's lost.

Shall section 35, as amended, carry?

**Mr Kormos:** Recorded vote.

**The Chair:** We have a request for a recorded vote. Shall section 35, as amended, carry?

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** That section's carried.

Page 103 is a government motion. This is a recorded vote.

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** The motion carries.

Now we go to section 44, a Liberal motion, on page 104. This is the motion that was determined to be out of order; therefore, we just vote on the section. Shall section 44 carry?

**Mr Kormos:** Recorded vote.

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** Section 44 carries.

We now consider section 49, the short title.

**Mr Kormos:** Recorded vote.

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** Section 49, the short title, carries.

We now vote on the long title.

**Mr Kormos:** Recorded vote.

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** The long title carries.

The next question is concerning the bill overall.

**Mr Kormos:** Recorded vote.

**The Chair:** Shall Bill 87, as amended, carry?

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** Bill 87 carries.

Shall I report the bill, as amended, to the House?

**Mr Kormos:** Recorded vote.

**Ayes**

Beaubien, Galt, Martiniuk, Molinari.

**Nays**

Bryant, Kormos, Peters.

**The Chair:** That is carried.

That concludes our business. This committee is adjourned.

*The committee adjourned at 1731.*









## CONTENTS

Monday 26 November 2001

**Food Safety and Quality Act, 2001, Bill 87, Mr Coburn / Loi de 2001  
sur la qualité et la salubrité des aliments, projet de loi 87, M. Coburn..... J-645**

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Mr Doug Galt (Northumberland PC)

Mr Gerry Martiniuk (Cambridge PC)

Mr Steve Peters (Elgin-Middlesex-London L)

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Ms Dagny Ingolfsrud, legislative counsel



J-28

J-28

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 27 November 2001

# Journal des débats (Hansard)

Mardi 27 novembre 2001

**Standing committee on  
justice and social policy**

**Nutrient Management Act, 2001**

**Comité permanent de la  
justice et des affaires sociales**

**Loi de 2001 sur la gestion  
des éléments nutritifs**



Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Tuesday 27 November 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Mardi 27 novembre 2001

*The committee met at 1536 in room 151.*

## NUTRIENT MANAGEMENT ACT, 2001

LOI DE 2001 SUR LA GESTION  
DES ÉLÉMENTS NUTRITIFS

Consideration of Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts / Projet de loi 81, Loi prévoyant des normes à l'égard de la gestion des matières contenant des éléments nutritifs utilisées sur les biens-fonds, prévoyant la prise de règlements à l'égard des animaux d'élevage et des biens-fonds sur lesquels des éléments nutritifs sont épandus et apportant des modifications connexes à d'autres lois.

**The Chair (Mr Toby Barrett):** I'd like to welcome the committee to our regular meeting of the standing committee on justice and social policy for November 27. The agenda today is Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts. Our business today is clause-by-clause consideration of the bill.

I always like to ask if any of the parties wish to make any brief opening statements. If not, we can go right into—not section 1 but actually the section before section 1. In keeping with tradition, I will start with the Liberal Party.

**Mr Steve Peters (Elgin-Middlesex-London):** Thanks, Mr Chairman. Just a few comments. This is legislation that farmers, municipalities, local politicians and residents have been asking for for a long time. I just want to commend you on how you've been able to keep it along through the nine-city hearings.

We'll deal with the amendments today, but I just want to reiterate the comment the minister made on his initial visit here, that is, his assurances that the regulations would also have consultations. That commitment the minister made is something I know he's going to honour. It's something the agricultural community very much appreciates. Because of the potential ramifications of this legislation, the consultations on the regulations are going

to be of utmost importance. I'd just go on the record saying I wish other ministers would make that commitment, to commit to consultation on regulations, and I commend the minister for that.

**The Chair:** Ms Churley, any opening comments?

**Ms Marilyn Churley (Toronto-Danforth):** Just briefly, Mr Chair. I too thank the government for making that commitment to consult on the regulations, because, as we know and as discussed in the committee hearings, this is a permissive bill; it allows for certain things to be done. But we all know that the devil is in the details. This is a framework before us today, and the regulations are really going to tell the story of what's going to happen. There's a fine balance between that consultation, which is critical not only for the farm community but for AMO, because, as we remember from the hearings, there are some very strongly felt differences of opinion on a couple of very key areas. We have to find that balance as well between the proper amount of thorough consultation and the need to get on with this.

I'm pleased we're here today to go through the amendments. Whether mine will win or lose, I can already guess, but you never know. But whatever happens, we need to continue with this, get the consultation happening and move forward, especially after Walkerton. Although in my opinion and in the opinion of many who came before the committee this only goes a small way toward where we need to be in the whole watershed—you will recall that the conservation authority and others talked about this being a small piece but a very important piece of the work we need to do to protect the environment and our water. So it's important that we move forward and get the consultations in place. Hopefully, the leadership contest going on won't interfere with that whatsoever and we'll get going and get the regulations in place and start doing our best to protect our environment and give the farm community and municipalities some surety about what they're going to have to be doing.

**The Chair:** Any other opening comments?

**Mr Doug Galt (Northumberland):** I appreciate the comments made by both opposition members. It has been a major effort of both ministers to ensure that there be extensive consultations. It started with a green paper and developing that in the fall of 1999, through the extensive consultations that you will recall, Mr Chair. You and I travelled the province as a task force to get input, and it's been evolving ever since. We just might have had it



moving along a little quicker had certain events not happened in the province. However, as a result of that, I think this is better legislation than it might have been if we'd brought it through earlier.

There's no question that I re-emphasize and support the comments made about the minister and the commitment to further consultation as the regulations are being developed. I can assure you that staff have been working on these from information gleaned to this point. Certainly we'll be back touching base, so to speak, with the stakeholders as we work our way down the road.

Ms Churley made reference to the protection of the environment. Once we get the regulations in place, there will be some protection for the farmers as well, that they're working within a framework, and that's very important for our agricultural community. But I also empathize with her comments about the protection of the environment, because within any group there are always a few bad actors. That's why this legislation is coming forward, because of the odd one, rather than the majority who do just a great job out there.

I look forward to this. Maybe we can get through these amendments today and get this moved into the House and get it completed prior to the Christmas break.

**The Chair:** We do have a number of amendments. Everyone will have a copy of them.

If we turn to page 1, there is a government motion, an amendment for a new section 0.1, in front of section 1.

**Mr Galt:** I move that the bill be amended by adding the following section:

"Purpose

"0.1 The purpose of this act is to provide for the management of materials containing nutrients in ways that will enhance protection of the natural environment and provide a sustainable future for agricultural operations and rural development."

If I may, this is a government motion proposing to amend Bill 81 by adding a clear and concise purpose section. We want to ensure that there is no doubt about the intent of the legislation, that is, to ensure that the materials containing nutrients are managed in ways that protect the environment and provide a sustainable future for agriculture and rural development. During the consultations, the committee heard this suggestion from several environmental groups in order to clarify the direction of the act.

**Ms Churley:** I just want to ask a question. You will see that the next amendment is mine. It also adds a new section which goes further than the purpose clause the government is putting in. I'm wondering, if this is supported, does my amendment still stand for debate?

**The Chair:** Yes, your amendment would stand. You're concerned that—

**Ms Churley:** I'm concerned because they're both dealing with the purpose, that if this one is passed, it would make mine moot because a purpose amendment is already passed. Or will that not happen until this section is actually passed? I'm trying to figure out if I'll have my say now or when we debate my amendment.

**The Chair:** Could I ask you to explain that again? The clerk missed part of that. I think I understand where you're coming from.

**Ms Churley:** I just want to be clear. My amendment, the second amendment, has different wording for the purpose of the act. They're both dealing with the purpose, but in different wording. I think that even if the government amendment passes, we'd still debate mine, because until the end of this section, when we've done all the amendments in the section, we can debate all the amendments until we actually vote on the section. Is that correct?

**The Chair:** Could I ask the clerk to respond to that?

**Clerk of the Committee (Mr Tom Prins):** Your motion is in order. We would deal with this motion next; then, if you chose to move your motion, you would move your motion next and—

**Ms Churley:** OK. That's all I wanted to know. Thank you.

**The Chair:** Is there any further discussion on the government motion?

**Ms Churley:** I'll be speaking in more detail about the wording of my amendment when we get to it, but I just want people to understand I will be voting against this amendment because the amendment that follows it is stronger. Although I support the intent of the government to bring forward a purpose, which is very important and which was missing from the bill, it doesn't go far enough, in my view. I would prefer to have my amendment pass. That's my explanation of why I won't be supporting this amendment.

**The Chair:** Are the members ready to vote on the government motion, page 1? All those in favour? Those opposed? I declare this motion carried.

We turn to page 2, the NDP motion, as we know.

**Ms Churley:** I move that the bill be amended by adding the following section:

"Purposes

"0.1 The purposes of this act are,

"(a) to protect the health of the natural ecosystem by maintaining the interaction of the dynamic complex of plant, animal and micro-organism communities and their non-living environment as a functional unit and in a manner characteristic of the natural region of the complex; and

"(b) to ensure that, in making decisions about carrying out the powers and duties of this act where there are threats of serious or irreversible damage to the environment, the persons making the decisions do not use the lack of full scientific certainty as a reason for postponing measures to prevent environmental degradation."

**The Chair:** Do you wish to expand on that further?

**Ms Churley:** Yes I do. As we're all aware, we heard from many, many people who expressed concern that this bill—and the government admits that they're not trying to cover the entire ecosystem with this bill and deal with all the other components that could be injected into the soil. So we have a situation where this bill, Bill 81, addresses one aspect of protecting surface and ground-

water from agricultural impacts, but we also heard and are aware that agricultural practice may put other contaminants, such as pesticides, sediment and pathogens, into our water. I would like the purpose to be more inclusive in terms of protecting the environment, our soil and our water.

Clause (b) speaks specifically to the issue that if there are reasonable grounds to believe there could be serious or irreversible damage to the environment or to human health, that's inclusive in the environment. We heard a lot from people, farmers included, that research needs to be done in many areas, but sometimes, because we don't have full scientific knowledge or there are debates about the science we do have—I suppose the most common one is cigarettes, tobacco. It's very hard to prove that tobacco actually kills people and causes disease, yet by now pretty well everybody accepts the fact that it does. A little while ago, not much was known about the E coli strain that killed people in Walkerton. So I've included that to suggest that if there's a possibility of harm being done to the environment of a serious nature, then that confusion or less than full scientific knowledge should not be used as an excuse to not do certain things, which might mean we'd end up being very sorry after the fact.

1550

I made this amendment simply to try to make the purpose of the bill more inclusive and therefore to perhaps have more impact on the regulations which the government will be consulting about in the near future. I was hoping that if this amendment passed, it would have some impact and influence on the regulations, which are going to be the meat of the bill.

**Mr Galt:** While we certainly agree with the need for a purpose for the act, the wording being referred to here is very broad and does little, in our opinion, to clarify the intent of the act. It fails to explain the purpose we're trying to define. Standards will be developed through an established process of public consultation, government review, and then of course the approval by the Lieutenant Governor in Council. This process allows the development of standards that will be based on a number of factors. Science indeed is an important factor, but not the only one. Clause (b) attempts to unreasonably limit the development of new standards.

**Mr Peters:** We won't be supporting this resolution. I support an amendment for clarity about the purpose of the legislation, also with the knowledge that the issues are going to be addressed in the regulations and the standards. A lot of the issues raised here we also saw when the presentation was made to us by the Ontario Federation of Agriculture about the nutrient management planning process, the work that goes into a nutrient management plan. These issues are addressed during that planning process.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** I've got a question for the mover of the motion. In clause (b), when you mention that "the persons making the decisions do not use the lack of full scientific certainty as a reason for postponing measures to prevent environ-

mental degradation," are you suggesting that somebody should be making a decision without having the full facts in front of them? Is that what you're suggesting?

**Ms Churley:** No, not at all. Perhaps I wasn't clear, but I'll try to clarify my position on that. There are times, certainly now, when there are situations where there are different opinions among scientists about a certain substance, a certain chemical, anything, I suppose. I used E coli as an example. It wasn't that long ago that scientists weren't aware of the impact of the strain that killed people in Walkerton, the effect that could have on human health.

In my riding of Toronto-Danforth—it used to be called Riverdale—many children ended up with brain damage and learning disabilities as a result of ingesting lead for a number of years from a lead plant. The scientific knowledge at the time was not there. Although it was certainly suspected to be causing health damage to these children, we were unable to get governments of any stripe anywhere to move on it because at that time there wasn't 100% scientific knowledge that—we now know this and there's no argument any more—lead has a very detrimental effect on children's health.

What I'm trying to address here, and I think it's pretty clear—where there are threats of serious or irreversible damage to the environment, sometimes we see scientists arguing among themselves when the evidence is out there: people getting sick, kids brain-damaged, whatever. But sometimes more work needs to be done. As with tobacco, to make the connection is sometimes very difficult. I don't think anybody in this room would deny now, in this day and age, that tobacco kills and causes all kinds of diseases, but it's sometimes very difficult to get that 100% scientific proof.

**Mr Peters:** We had three of the Big Five tobacco representatives here in the room.

**Ms Churley:** We could call them as witnesses. I recognized them. That's my point; they would have a different opinion.

**Mr Beaubien:** The motion is kind of vague, so I'll take it at that.

**Ms Churley:** Well, yours is even vaguer, if you want to get into that.

**The Chair:** This concludes discussion on this amendment, on page 2. Are the members ready to vote?

**Ms Churley:** I'd like a recorded vote.

**Ayes**

Churley.

**Nays**

Beaubien, Galt, Guzzo, McLeod, Peters.

**The Chair:** I declare this motion lost.

If we turn to page 3, we have an NDP motion.

**Ms Churley:** I move that the definition of "nutrient" in section 1 of the bill be amended by inserting "or



applied to golf courses for the purpose of establishing or maintaining them" after "a prescribed use."

That's simply to make sure that we're not just talking about farmland, agricultural land in this case. There are all kinds of pesticides and other applications, as you know, applied to golf courses, and we had several deputants suggest that they should not be exempt, that they too should come under these new rules. This is a very simple amendment. It simply establishes a bit of a level playing field here. In terms of protecting the environment and the watersheds that golf courses are also in, I think, as did many deputants, that golf courses should be included in the regulations and under this law.

**Mr Peters:** I want to speak in support of this resolution. Farmers have been unfairly blamed for a lot of the water quality issues around this province. We have seen that municipalities have been as much of a culprit as anybody, with the bypasses from their waste water treatment plants. It's important that we are dealing with nutrients, **and we know there are a lot of golf courses across this province, many of which have been constructed in rural Ontario, on former farms.** There are water courses running through these golf courses. If we're going to stand behind this nutrient management legislation and ensure that our farmers use best practices, we need to ensure that everybody who is applying nutrients follows those best practices as well. As I say, we will be supporting this.

**Mr Galt:** The current definition of "nutrient" allows for the regulations to prescribe other uses besides the growing of agricultural crops. The primary focus of the act is to deal with nutrients on agricultural land. There is not a need to list other secondary areas where regulations may be needed in the future. This amendment would list only one secondary area, and if this one is included, then one would reasonably expect a full list of what other secondary uses should also be included. The current wording of the act allows for more flexibility and clearly retains the focus on the primary area of agricultural land.

1600

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** Forgive a somewhat naive question, because I come newly to this, as all the members of the committee will be aware, but I'm just not sure why the application on golf courses isn't as relevant as on agricultural lands. Why would that not be an obvious one to include, even if there are some others that are missing?

**Mr Galt:** The focus and the original purpose was for agricultural land. That's where the issue arose to begin with. Yes, during the hearings, the concern about golf courses came up, but also about people's front lawns, parklands, baseball diamonds, and the list goes on. It would not be an advantage to list one of these others, outside agricultural, without listing the whole list, or you'd have to go back to the legislation. This way, it gives a primary focus to agricultural lands but doesn't limit it there, so we can do that kind of thing down the road through the regulations with this bill; we wouldn't have to go back and change the legislation. By putting

this in, it might be interpreted by lawyers that we'd have to go back to add other areas, like parkland. The way it is, it will do what we've been asked for and what's come up during consultations.

**Mrs McLeod:** Is there a fairly clear commitment and intent on the part of government to move quickly to include other areas in regulation?

**Mr Galt:** There's a clear commitment on the part of government to get on with nutrient management over the next roughly five years—that's what's being looked at—to implement all of that. Depending on the need, these others will be looked at. Certainly your concern and the concern of the NDP is very genuine, and I appreciate it. It's what we heard out there and it will be looked at as we work with regulations.

**Ms Churley:** To follow up on what Mr Galt had to say, it is true, and he makes a good point. Golf courses came up more often than any of the other land uses, no doubt about it, and that's because there are a lot, and we seem to be getting a lot more. Golf is a very popular hobby. Golf courses are huge and tend to use vast amounts of pesticides. I'm not aware of some of the other applications, but to keep the grass really nice various nutrients and pesticides are put on that land. They're big. That's why I chose that as one that should be included in this bill. I recognize, as the parliamentary assistant said—it's quite true—that there are other land uses that need to be considered.

I believe I heard the parliamentary assistant say that those will be looked at during the course of regulations, so we can expect to have discussions around golf courses. When you get into people's lawns, that gets us into the whole area of municipal bylaws and the Hudson decision in Quebec and whether it should be municipalities or the provincial government doing that. But large tracts of land, like golf courses, in my view and in the view of many who came to speak to us, should be included in this bill simply because they take up huge tracts of land and can and in fact do have impacts on our water. I thought it was important to deal with this one specifically right away, but I'm pleased to hear that during the discussions and consultations around the regulations—I believe, if I can confirm—we will be looking at additions to the existing description. Can I have that on the record?

**Mr Galt:** It's already on the record.

**Ms Churley:** OK. So that's what you said, that we will be—

**Mr Galt:** We'll be looking at all aspects of nutrient management in all areas, no question.

**The Chair:** Are there any other comments? Are the members ready to vote?

**Ms Churley:** Could I have a recorded vote?

**Ayes**

Churley, McLeod, Peters.

**Nays**

Beaubien, DeFaria, Galt, Guzzo.

**The Chair:** I declare the motion lost.

That concludes the amendments to section 1. Shall section 1, as amended, carry? Carried.

We have an amendment on section 2, on page 4, a Liberal motion.

**Mr Peters:** I move that clause 2(1)(c) of the Nutrient Management Act, 2001, be deleted.

In explanation, my concern with this as it stands right now is that this leaves the opportunity for alternative service providers to play a role, and I have some very serious concerns with that. I want those individuals who are going to be involved with the administration of any of the provisions of this act to be ministry employees. My concern is that clause (c) leaves the door open for alternative service providers to be appointed.

**Ms Churley:** I support this amendment and share the same concerns. Again, this was an issue that came up during the hearings. I would like to ask the parliamentary assistant why it's there and what he is envisioning. What shape do you think this is going to take and how would the private sector be involved?

**Mr Galt:** In response to both of the opposition members' questions, this clause forms an integral part of the legislation, needed for the eventual shift to alternative service delivery for the non-enforcement components of the act.

**Ms Churley:** Aha: privatization.

**Mr Galt:** This is a clear government direction, so this section is indeed necessary. This section also needs to be included to allow for the appointment of those outside the ministry, such as conservation authorities etc, who may be appointed as directors for a specific role under this act.

**The Chair:** Any further comments on that motion?

**Mr Peters:** I'd just ask for a recorded vote.

**The Chair:** Are the members ready to vote?

**Ayes**

Churley, McLeod, Peters.

**Nays**

Beaubien, DeFaria, Galt, Guzzo.

**The Chair:** I declare the motion lost.

The next question, shall section 2 carry? Carried.

Section 3: there's a Liberal motion on page 5.

**Mr Peters:** I move that clause 3(1)(c) of the Nutrient Management Act, 2001, be deleted.

In explanation, it's the same as the comments I made previously on clause 2(1)(c) and the concern we expressed over alternative service delivery providers. We feel this is legislation that should be administered by the ministry. We're not supportive of alternative delivery providers.

**The Chair:** Any further comments on this motion?

**Mr Peters:** I request a recorded vote too, please.

**The Chair:** The members are ready to vote?

**Ayes**

Churley, McLeod, Peters.

**Nays**

Beaubien, DeFaria, Galt, Guzzo.

**The Chair:** I declare that motion lost.

Shall section 3 carry? Carried.

We now turn to page 6, a Liberal motion.

**Mr Peters:** I move that clause 4(1)(c) of the Nutrient Management Act, 2001, be deleted.

It's the same rationale as for the two previous clauses we dealt with, expressing our concern about allowing alternative delivery providers into an area that should be administered by the ministry and government employees.

**The Chair:** Any other discussion on this one? Are the members ready to vote on this?

**Mr Peters:** Recorded vote, please.

**Ayes**

Churley, McLeod, Peters.

**Nays**

Beaubien, DeFaria, Galt, Guzzo.

1610

**The Chair:** I declare the motion lost.

Shall section 4 carry? Carried.

We now go to section 5. We have amendments from all three parties. The first amendment to section 5 is found on page 7, and it's a Liberal motion.

**Mr Peters:** I move that subsection 5(1) of the Nutrient Management Act, 2001, be amended by striking out "may" in the first line and substituting "shall."

We need to be very clear with this legislation, and I think including the word "may" just leaves it open. It isn't clear that anybody will have to act on this. To clarify and ensure what the role of the Lieutenant Governor is in the creation of these regulations, the word "may" should not be in there; it should be "shall."

**Mr Galt:** Subsection 5(1) lists the possible areas where regulations may need to be created over time. They're deliberately under a discretionary heading, as not all subjects may need regulations right away. The breadth of topics is to allow for potential areas of concern now and in the future. The intent in section 5 is to deal first with those practices that pose the highest risk, and the others may be the subject of future regulations, if they are needed.

**Ms Churley:** I speak in strong support of this amendment. Given that so much of the bill is left to regulation, changing the word—and I note Mr Peters has further amendments in other sections where he changes "may" to "shall." That seems to show up a lot in government legislation, leaving the door open so that some things may be



done and some things may not be done. In my view anyway, and according to what Mr Peters was saying, in all aspects of this bill it's important that it all be done. The door shouldn't be left open so that some of these things, because of the word "may," might not happen. It's strengthens the bill. It makes it clear that these things are going to happen.

**Mr Peters:** When we toured around, we heard very clearly the support for the development of this legislation and the real need for this legislation. I don't think we want to leave things open-ended. Every one of us around this table wants to make this the strongest legislation we possibly can have. Leaving it open with the word "may" doesn't gives assurance to farmers, citizens or municipalities across this province that the government will do something. People in Ontario want to know that the government will or shall do something. We've got other amendments dealing with the words "may" and "shall" throughout this. We want to send a clear message to people in Ontario that we want strong and effective legislation.

**The Chair:** Any other comments? Are members ready to vote on this motion?

**Mr Peters:** A recorded vote, please.

#### Ayes

Churley, McLeod, Peters.

#### Nays

Beaubien, DeFaria, Galt, Guzzo.

**The Chair:** I declare the motion lost.

The next amendment to section 5 is a Liberal motion found on page 8.

**Mr Peters:** I move that subsection 5(2) of the Nutrient Management Act, 2001, be amended by striking out the word "may" in the second line and substituting "shall."

The rationale is the same as the previous subsection 5(1). We want this to be strong legislation, and leaving the word "may" in leaves it too open-ended.

**The Chair:** Is there any discussion on this motion? Are committee members ready to vote?

**Mr Peters:** A recorded vote, please.

#### Ayes

Churley, McLeod, Peters.

#### Nays

Beaubien, DeFaria, Galt, Guzzo.

**The Chair:** I declare the motion lost.

The next amendment is found on page 9. It's a government motion.

**Mr Galt:** I move that clause 5(2)(r) of the bill be struck out and the following substituted:

"(r) requiring that studies be conducted in relation to the use of materials containing nutrients on lands, including topographical studies and studies to determine soil types on those lands and studies to determine the depth, volume, direction of flow and risk of contamination of water located on, in and under those lands;

"(r.1) requiring that the studies mentioned in clause (r) be conducted by a person who has the prescribed qualifications;

"(r.2) requiring that the recommendations, if any, contained in the studies mentioned in clause (r) be followed in the use of materials containing nutrients on the lands being studied."

**The Chair:** Do you wish to explain that one further?

**Mr Galt:** If I may. The act provided for geophysical studies that would deal with the types of soils and the direction of the groundwater flow through the lands. The amendment is to clarify and provide a clear listing of what might be included in geophysical studies. In this way, everyone will know what would be needed to ensure compliance with the law. The reference in Bill 81 seemed to cause confusion with respect to what types of studies would be required. The new wording is clearer and more descriptive.

**Mr Peters:** Perhaps the parliamentary assistant can explain the difference between a topographical study and a geophysical study.

**Mr Galt:** I think we'll call on an expert for that one, if you don't mind.

**The Chair:** Please do.

**Mr Randy Jackiw:** My name is Randy Jackiw, with the Ministry of Agriculture, Food and Rural Affairs. That was exactly the point: "Geophysical" was difficult to define, as to whether it meant things like topographical. "Topographical" is very specific as far as the surface etc. It's clearer.

**Mr Peters:** Just so I understand, "topographical" was leaving it too open to just what's going on on top of the ground. "Geophysical" is going to allow making sure it's on top of the ground and below the ground.

**Mr Jackiw:** Right.

**The Chair:** Well, what is being inserted is—

**Mr Peters:** Oops. I've got that twisted. They're dropping "geophysical" and inserting "topographical."

1620

**The Chair:** Yes.

**Mr Jackiw:** Yes.

**Mr Peters:** I have another question, Mr Chairman, on (r.1), if I may. It says "be conducted by a person who has the prescribed qualifications." Where will we see the definition of what those prescribed qualifications are? Is that something intended to be clearly defined in the regulations?

**Mr Galt:** Yes.

**The Chair:** Further discussion on this amendment? Are members ready to vote on this amendment? Do you wish a recorded vote?

**Mr Peters:** No.

**The Chair:** We're voting on the government motion found on page 9. All those in favour? Those opposed? I declare this motion carried.

If we could turn to page 10, we have an NDP motion again on section 5.

**Ms Churley:** I move that section 5 of the bill be amended by adding the following subsection:

"Nutrient management plans and strategies

"(4) Despite anything in the regulations made under the Environmental Bill of Rights Act, 1993, nutrient management plans and nutrient management strategies are class II proposals for instruments for the purposes of that act and the regulations made under it."

That's pretty self-evident. It means that nutrient management plans and strategies have to be posted on the EBR registry for public comments. Right now, there's nothing to suggest that there can be any input or comment from the public when the plans are being developed and approved. I understand that it does allow for local communities to help and be involved in prescribed matters, but we're not sure what's going to happen to this under the regulations. Given the huge impacts on communities—and the public certainly made it really clear when they came before us that they wanted to have a say and to have the ability to know what's going on and how these plans look. It's very clear that's why the EBR was set up. I believe these are important enough that these plans should be posted on the registry so the public can have a say before the plan is finally approved.

**Mr Galt:** This would be a rather unusual method of designating what should be proposals for instruments and then classifying them. The Environmental Bill of Rights Act, 1993, has a process in place to deal with a proposal for an instrument under the EBR regulations. The classification does not need to be done in this act.

The broader issue is one of the appropriateness of what should be a proposal for an instrument under the EBR, as the intent of the Nutrient Management Act, 2001, is that all farms will have a nutrient management plan over the next few years. Some plans may be quite minor and the consequences would not warrant their being treated as a class II instrument. To require this now would be premature and unnecessary.

The intent of the government has been that alternate service delivery partnerships are an option that needs to be included. The act makes it clear that alternate service delivery will not be allowed for enforcement. This proposed clause would interfere with the ability to use a third party for approval, as the nutrient management plans would no longer be able to be posted on the EBR once approval is not done by the government. The proposed clause is not appropriate to be inserted into this act. The issue of what needs to be included as proposals for instruments under the EBR can be pursued without changes to this act.

**Ms Churley:** What an interesting answer. Can you explain that?

**Mr Galt:** I thought you would clearly understand it.

**Ms Churley:** I did, and I disagree. I'm surprised at that response, although I'm reading between the lines.

**Interjection:** You've got to read the lines.

**Ms Churley:** I read the lines as well, but you know what? Sometimes you've got to read between the lines.

I think this is extremely important. Your own government has just come forward with the Gibbons report, which talks in detail about the need for all ministries to be more environmentally aware and take that into account in all decisions and changes made within each ministry. Certainly that's what the Environmental Bill of Rights is about. This is very much connected to our environment and health. It seems incredible to me that the government would not want to make it clear in this bill that the public would have the opportunity to review the plans being made.

The response just didn't make any sense to me. To me, this is cut and dried. You've got communities directly affected by the plans; those should be posted and they should have the right to have a comment.

**Mr Galt:** I can try once more to explain.

**Ms Churley:** In your own words.

**Mr Galt:** I'll give some examples. We have over 60,000 farms in Ontario, and 60,000 plans on the EBR registry would be a lot of clutter.

If I could give you an example, about four years ago, maybe three, you remember a water-take permit for Lake Superior for bulk export of water? It was missed, because I believe there's too much already on the EBR for most people going in to check to pick up on the various issues. It wasn't identified that that one was for export purposes until after it had been granted. As you understand, for a water-take permit the granting was about how much effect it would have on Lake Superior. Well, taking a boatload of water out of Lake Superior, as you understand, wouldn't have that much effect on it, but certainly the public was very concerned about export. It was the province that responded, not the federal government, on that export situation.

I use that as an example that I believe there's an awful lot already on there being missed by people monitoring for that kind of thing. If we started adding in, every few years, 50,000 or 60,000 nutrient management plans, it's really going to add a lot to the problem. It would be advantageous to add and require through regulation the ones with the greatest risk or possibly largest number of animals. I think that's the way to address it in a responsible way.

**Mr Peters:** There's going to be a logistical nightmare, with approximately 67,000 registered farms in this province. It's not just the question of posting them on the EBR. We heard a lot about public access to the nutrient management plans. I don't even want to think what 67,000 nutrient management plans look like and how many rooms like this are going to be filled. I think that's going to be one of the challenges in the development of the regulations. I heard the parliamentary assistant make some comments about some farms or some applications. That is something that's really going to have to be clarified at the regulation level: where do you draw the line as to what is posted and what isn't posted? But with this



resolution as written, to post 67,000 applications is going to be a logistical nightmare.

**Ms Churley:** Could I ask the parliamentary assistant how he views the community involvement in the plans? What would your solution be for communities to have some say and some input and knowledge of the plans in their own communities?

1630

**Mr Galt:** Through discussion and through consultation, a lot of that will be sorted out, but there are various levels, from having it on the EBR to providing for public notice for having full-blown public town hall-type meetings. There are various ways it can be handled. We're dealing with nutrient management plans that vary from a farm of a few acres to literally thousands of acres. We're dealing with trying to put through something that would look at handling, what you do with these manures in the wintertime? Ranging from New Liskeard, Thunder Bay through to southern Ontario, areas like around Chatham, east to Kemptonville—there are very different soil types, very different kinds of slopes on lands. That has to be addressed with almost each and every individual nutrient management plan as it comes forward to be approved. A lot of consideration has to go into it. That's why it's based on a nutrient management plan rather than a lot of detail, in both the bill and—there will be some detail in regulations, but an awful lot of it will be based on the approval of that plan.

**Ms Churley:** If I may, this amendment was made as a result of a recommendation from the Sierra legal organization. It's not clear to me from their wording whether their proposal is to have every—because you make a good point about the thousands, every single nutrient management plan. I would agree with you that that many plans on a registry just wouldn't work. I must admit I'm not clear about their recommendation, whether they're suggesting that every plan be put on that registry or if there is another way of classifying groupings within municipalities. I don't know. But I do recognize the concern you raised around the logistics of posting every single little plan that comes through. I think I heard you agree with me that some of the major, more controversial plans may indeed be subject to posting on the EBR and that that might be dealt with through regulations?

**Mr Galt:** Yes, that's the thinking. I don't want to go all the way out, but probably some of them will go on the EBR. Some of them are very large and there are definite public concerns. I expect you'll see, in some of the regulations, that it would appear that way, yes.

**The Chair:** Is there any further discussion? Are the members of the committee ready to vote? We're voting on the NDP motion found on page 10. All those in favour? Those opposed? I declare the motion lost.

That concludes the amendments to section 5. Shall section 5, as amended, carry? Carried.

Section 6: we have a Liberal motion on page 11.

**Mr Peters:** I move that section 6 of the Nutrient Management Act, 2001, be amended by striking out the word "may" in the first line and substituting "shall."

Again, just for clarity and strength of this legislation, the word "may" is too open-ended and we feel the word "shall" gets more to the point.

A recorded vote, please.

**The Chair:** OK. Is there any further discussion? Seeing none, I assume members are ready to vote.

**Ayes**

Churley, McLeod, Peters.

**Nays**

Beaubien, DeFaria, Galt, Guzzo.

**The Chair:** I declare that motion lost.

Shall section 6 carry? Carried.

Section 7: I see no amendments. Shall section 7 carry? Carried.

In keeping with tradition, we could collapse several sections for the purpose of voting. Shall sections 8 through 51 carry? Carried.

We have a government motion on section 52. It's found on page 12.

**Mr Galt:** I move that clause 52(6)(a) of the bill be amended by taking out "within 10 days of taking or being appointed to take possession or control of the property" and substituting "within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order."

This section of Bill 81 was modelled after an existing section in the Environmental Protection Act. Recently, a clarification to the EPA resulted in the change above. The motion would make the two acts consistent again. The wording of clause 52(6)(a) in the first reading version of the bill only addresses those situations in which the order was in place before the receiver or trustee in bankruptcy took possession or control of the property. The proposed amendment expands the meaning of the clause to include orders made after a receiver or trustee in bankruptcy take possession or control of the property.

**The Chair:** Is there any further discussion on this motion? Are members ready to vote? All those in favour? Those opposed? I declare that motion carried.

Shall section 52, as amended, carry? Carried.

We'll turn to section 53: we have a government motion, found on page 13.

**Mr Galt:** I move that subsection 53(2) of the bill be amended by striking out "on the third day after the day of mailing" and substituting "on the fifth day after the day of mailing."

This change would allow for any document given or served under this act to be deemed to have been served five days after the day of mailing instead of three. The proposed motion deals with the practical matter of life in rural Ontario. To assume that mail was received within three days of posting was not acceptable in the rural area. This will also bring Bill 81 into alignment with requirements under the EPA. This addresses concerns expressed

by several farm organizations about the shortness of the time periods in the bill. The change to five days allows for a more reasonable time allowance to receive mail.

**The Chair:** Any further discussion? Are members ready to vote? All in favour? Those opposed? I declare that motion passed.

Shall section 53, as amended, carry? Carried.

Turning to section 54, there are no amendments. Shall section 54 carry? Carried.

Section 55: on page 14, we do not have an amendment; the NDP has filed a recommendation. This is not a motion, so I would declare this out of order.

**Ms Churley:** What should have been here is deleting that one reference, but I understand what you're saying. I'm not quite sure what happened here, because what it says is "recommends voting against this section" as opposed to—is that what yours says?

1640

**The Chair:** I have "recommends voting against this section." I also understand that you cannot make a motion to delete a section.

**Mr Peters:** Mine is "deleted," and we're both out of order.

**Ms Churley:** I assume, then, that that's what happened; we must have been told we couldn't make a motion to delete it. Perhaps this was a trick to try to get it through, but it didn't work. Does that mean I can't speak to it?

**The Chair:** We can certainly discuss this, but we can't vote on it.

**Ms Churley:** Once again, what this is about—and my Liberal colleague brought this up earlier—is privatization and contracting out these services. It prevents the privatization of the management of the registry of the nutrient management plans and strategies and review of the same etc. As it turned out—you're quite right—it was difficult to find a way to word that. We weren't allowed to delete it. Obviously, I will be voting against it, but if you move to the next one, which is also going to be ruled out of order for the same reason, it's a partner to the preceding one. I have a critical question to ask, therefore, of the parliamentary assistant, given that neither of these are in order.

Given the fact that any corporation—and "corporation" is one of the words in the section that I wanted to delete—can end up doing this work, we don't know who's going to be doing it. The next amendment, which will be ruled out of order, talks about liability. It removes the crown liability. You've got to ask the question, since it's not going to be deleted, if the crown is removed from any liability and these duties are contracted out or a corporation is doing it, whatever, and the crown is not liable and something goes wrong, who would be liable?

**Mr Galt:** I'll give an opinion, but I'd like to invite legal counsel to confirm or expand. My understanding is that if we're contracting out, those who would be contracted would be bonded. There would be assurances. But I really need legal counsel to help me with that particular question. Who would like to come forward? Just state

your name for Hansard and assist me a wee bit. The wheels need some oil.

**Mr Leo FitzPatrick:** My name is Leo FitzPatrick. I'm a lawyer with the Ministry of the Environment. In circumstances like this, where the government would be contracting for services to be performed, one would assume that there would be provision made in the contract that the contractor would be required to provide sufficient insurance for liabilities that might be encountered in carrying out the contract.

**Mr Galt:** Just to help with the question, if the government didn't require that in the contract, then who's liable? Would it come back to the crown?

**Mr FitzPatrick:** It would depend on how the contract was drawn up, but one would expect that the contractor would take on the liability as well as the duty to perform the function. That's the reason it would make sense for all concerned that the contractor be required to ensure that liability.

**Ms Churley:** If I could follow up, I'm just reading that section again, and I can't see anything in the act that states that. Is there? Am I missing it? There isn't. This is a problem, then, because it's not stated in the act. You say that is the intent, but right now we have a situation where—and it's very clear if you read through this section. It goes on for several paragraphs making sure every which way you can that the crown, a crown employee under the Public Service Act, "a minister or an employee or agent of the crown because of anything arising out of or in relation to a matter carried on or purported to be carried on pursuant to a regulation that exempts a person from the requirement to obtain a certificate, licence or approval.... No personal liability"—

It's important that we take a look at this. I don't have an amendment ready, but this is a problem, where the crown has been exempted but there's nothing within the act that says anybody would be liable should there be some problems. Do you have any suggestions? You made the suggestion that that is the intent, but it's not in here.

**Mr FitzPatrick:** As the parliamentary assistant has mentioned on a number of occasions, if this approach to carrying on these affairs is pursued, there is a need for flexibility; there would be a need for flexibility in this matter as well, depending on exactly what form of service is being contracted out, what sorts of potential liabilities might be there.

**Ms Churley:** There may be some more information coming.

**Mr FitzPatrick:** My colleague is pointing out that in section 55, dealing with delegation of powers, the agreement under clause 55(3)(c) would require "the delegate to obtain and maintain specified kinds and amounts of insurance." That's mandatory: "delegation agreement shall contain."

**The Chair:** Further discussion on this issue?

**Mr Peters:** Recognizing that our own resolution is going to be out of order, we certainly won't be supporting section 55. It's the same as some of the comments I made earlier expressing our concern about alternative delivery providers. We want this legislation to assure all



citizens of Ontario that they can have the utmost confidence that as an agricultural operation chooses to either change the way they do things or come up to 21st-century standards—we've seen what has happened, the results of contracting out and the privatization of services in numerous instances across this province. We want to ensure that people have confidence in what the farmers of Ontario are doing. I have some serious concerns about delegating the authority through alternative service providers, that the public confidence isn't going to be there. For that reason, we will be voting against 55.

**The Chair:** Are all members now ready to vote?

**Mr Peters:** A recorded vote, please.

**The Chair:** We're voting on section 55.

#### Ayes

Beaubien, DeFaria, Galt, Guzzo.

#### Nays

Churley, McLeod, Peters,.

**The Chair:** I declare section 55 carried.

We now turn to section 56. On page 16 we have an NDP motion. I will mention, Ms Churley, that for the same reasons this is out of order.

**Ms Churley:** I recognize that, for the same reason, this is out of order. I spoke already to this. I have to tell you that notwithstanding the one clause that was pointed out, I have serious concerns about this entire section. I'll be voting against it.

1650

**Mr Peters:** We too will be voting against it, for some of the reasons outlined in the comments about alternative delivery providers. Even though 55(3)(c) says the government is requiring those individuals delegated to provide this service to have insurance, I don't think it's responsible for the government to wash its hands of this issue, to just say there's no liability on the government and we're confident that the alternative delivery providers have insurance. I don't think that's responsible to the citizens of Ontario. I think the government needs not to rely on private insurance but to stand up and be counted. For those reasons, we won't be supporting 56 either.

**The Chair:** Is the committee ready to vote?

**Mr Peters:** A recorded vote, please.

**The Chair:** We're voting on section 56.

#### Ayes

Beaubien, DeFaria, Galt, Guzzo.

#### Nays

McLeod, Peters.

**The Chair:** I declare section 56 carried.

Section 57: we have a Liberal motion on page 17. I understand that for the same reason this is out of order. Discussion on this section?

**Mr Peters:** We will not be supporting section 57. This is a piece of legislation that, as we've heard and talked about, has been called upon by virtually all segments of society. This is also a piece of legislation that is going to benefit all of society. All taxpayers will have comfort in the knowledge that this legislation is there to protect them. Because this is something that all taxpayers receive the benefit from, I feel that in this case there should not be fees, that the government should accept the responsibility for this and not require fees to be paid. It should be a government responsibility.

**Ms Churley:** The other motions around this were out of order. They would have been lost anyway, but we've had an opportunity to discuss them. We have no idea who will be doing this work, and this means that the private sector can charge any fees they want to charge. There's no government control. It could be cost recovery. We just have no idea. The details are to come later about who's going to be doing this, but the bottom line is that fees can be charged. There's no amount. We don't know who's going to be charging them. There's no clarity about cost recovery.

While recognizing that this is out of order, given that the other sections have been voted on and passed, I consider this to be a very serious issue. For that reason, I will be voting against this section.

**Mr Galt:** I'd be willing to put on the record that the payment of fees will be based on cost recovery for services provided under this act. The fees are not going to be a tax and will not be bigger than the cost to deliver the services.

**Ms Churley:** How do you know? You don't know who's going to be providing those services. I mean, look what happened with Andersen Consulting and the millions and millions of dollars they've been getting from the government. You have nothing to base that on. There's nothing in the bill.

**Mr Galt:** This isn't going to be a floating fee. It's something the government will establish. Certainly the government will start it out, and down the road, alternative services will be looked at but not necessarily implemented.

**Ms Churley:** OK.

**The Chair:** Thank you for that discussion. Are the members ready to vote on section 57?

**Ms Churley:** A recorded vote, please.

**The Chair:** This will be a recorded vote. All those in favour of section 57?

#### Ayes

Beaubien, DeFaria, Galt, Guzzo.

#### Nays

Churley, McLeod, Peters.

**The Chair:** I declare section 57 carried.

For section 58, we have a government motion on page 18.

**Mr Galt:** I move that clause 58(g) of the bill be struck out and the following substituted:

“(g) respecting procedures for inspections under part IV, including procedures to prevent the transmission of contagious diseases, and requiring inspectors to follow the procedures;”

This motion deals with the concerns of farmers, farm groups and some municipalities about protecting their animals from health hazards. They don't want to worry about diseases inadvertently being transmitted to their animals by enforcement officers, and we agree. We think it's only prudent to provide assurance to farmers that any provincial officers entering their property will follow strict biosecurity protocols.

**The Chair:** Is there further discussion? Seeing no further discussion, if members are ready to vote, we're voting on the government motion on page 18. All those in favour? Opposed? I declare that amendment carried.

Shall section 58, with this amendment, carry? Carried. Section 59, page 19: we have an NDP motion.

**Ms Churley:** I move that section 59 of the bill be amended by adding the following subsection:

“Deadline for regulations

“(7) Despite anything in this act, no regulations shall be made under any provision of this act later than six months after the day that provision comes into force, except for regulations that amend or replace regulations that have been made under that provision within six months after the day that provision comes in force.”

This bill, it has been noted before, by all who came before us during the hearings, is regulation-heavy; this is a framework. Despite the speech made by the minister some time ago that this would be done quickly—and we were guaranteed that—it's been a long time coming. If you look at the bill, there's absolutely nothing anywhere that guarantees that this is going to happen quickly. The minister did say things like, “What we are now proposing will address these concerns, safeguard our environment and ensure continued prosperity for our agri-food sector.” He goes on to say, “[N]ew standards would immediately be established for the new construction or expansion of large livestock operations. These standards would be applied to existing larger animal operations within three years, and appropriate standards for all other farms would be phased in over five years.”

He made some commitments right there in his speech. Then he talked about the following steps: developing in partnership “strong new standards for all land-applied materials containing nutrients relating to agriculture, including livestock manure” etc, etc. He said, “We propose to establish and deliver the required education, training and certification programs,” and he ended with, “We know just how important it is to every one of us who lives in this great province to make sure we do this right.”

He talked in his speech about the need to make this happen quickly, but there's absolutely nothing anywhere

in the bill that compels the government to meet the goals that the minister himself outlined. Because of the concerns expressed—and we all know that before the incidents in Walkerton there had been some issues here, not just around the so-called factory farms or intensive livestock but overall. I think it's really critical that we establish time frames so it will become a major priority to get the consultations done and get the act in place.

1700

**Mr Galt:** I empathize with the concern the member is putting forward, but this clause would appear to require that all regulations contemplated should be prepared within six months or not at all. This is contrary to the government's stated intent that this act will allow for continuous improvement. As the need arises for new regulations, the act presently allows for their creation over time. This clause is unnecessary and limiting. It would not improve the ability of the act to deal with environmental issues or changes to farming practices that may arise in the future.

**Mr Peters:** I just want to echo similar concerns about trying to get a time frame. Every one of us wants to have this in place as quickly as possible. The government is going to have to move very quickly anyway, because you have interim control bylaws that municipalities have put in place. They've renewed those interim control bylaws, and an interim control bylaw can only be renewed once. These bylaws are going to be running out next year so they are going to have to move quickly.

My concern is that tying the hands—how quickly are we going to deal with the golf course issue, as an example? We heard earlier that that is going to be dealt with in regulations. We need to do everything we can to keep lighting a fire under the government to deal with these regulations, but I would hate to put a time frame in and say that after six months, we're not going to be able to do anything else. I want to make sure that this is a good piece of legislation, and I'm afraid that this could tie some hands.

**Ms Churley:** I would like to point out, though, that governments can make changes, get rid of or delete regulations any time by order in council. That's one of the specific issues around this bill: it's a framework. What this does is commit the government to speeding up the existing promises that have been made to people to move quickly on getting those regulations in place. But the government can, at any time—it's a complaint we often make in the House, in fact, that we have so much legislation that requires regulations, which really are the meat of the legislation. That's the fact with this. This is not going to happen until we get those regulations in place, but there's nothing to stop the government from proceeding to bring in new regulations if new and necessary changes need to be made. That often happens when new regulations are brought in, for a variety of reasons.

I understand the concerns expressed, but the government's hands aren't tied. The intention of this is to get moving and have it happening over the winter. Spring



is coming and these concerns are going to be raised again after the snow and ice starts melting. We all know that.

It doesn't restrict the government from continuing to work on regulations. It puts a tough time frame on it and makes us get moving.

**Mr Galt:** In response to some of those, certainly I'm empathetic to the concerns expressed by both opposition members. There's a whole balancing act here. This is approaching two years in the making, and a lot of people would have liked to have had this through much earlier, myself included. We also had the concern expressed by the opposition, and rightly so, that there will be extensive consultations as the regulations are being developed. We also have the issue of interim control bylaws, that they can only be made for one year, with a one-year extension, and then municipalities have to develop their permanent bylaw, which can be quite expensive.

Certainly the thinking right now is all-new construction, as soon as possible. Of course, you're wanting some consultation—that would certainly be looked at, which is where the interim control bylaw comes in—and then start moving through from there. But there's a whole balancing act with all those issues. As soon as we can get this bill through, we'll be on to regulations.

**The Chair:** Any further discussion? Are the members ready to vote?

**Ms Churley:** Recorded, please.

**The Chair:** A recorded vote on the NDP motion found on page 19.

#### Ayes

Churley.

#### Nays

Beaubien, DeFaria, Galt, Guzzo, Peters, McLeod.

**The Chair:** I declare the amendment lost. Shall section 59 carry? Carried.

Section 60: on page 20 we have a recommendation from the NDP. As before, this is out of order.

**Ms Churley:** Can I ask why an amendment to delete a section is out of order? I still don't understand why it would be.

**The Chair:** I'm going to ask the clerk to explain why a recommendation or a motion—

**Ms Churley:** If it achieves the purpose, as opposed to putting in new words—if deleting a particular section actually achieves a purpose, why would you not be able to do that?

**The Chair:** Very simply, I understand that if you don't want a section in there, you can vote against it.

**Ms Churley:** So it's as simple as that, and that's why the wording is "recommends voting against this section."

**Mr Beaubien:** To be fair to the mover of the motion, they're only recommending to vote against a section. Am I wrong? Isn't that a proper procedure? You can recommend voting against a section, can't you?

**The Chair:** Yes. We can debate it, we can discuss it, but we can't vote on the motion to vote against something.

**Mr Beaubien:** So you cannot present a written motion suggesting voting against a section.

**The Chair:** I guess you could present it and the committee can discuss it, but we can't vote on it, because—

**Ms Churley:** That's fine. I just wanted clarification. I haven't done this in a while. You're quite right. As long as we can discuss it, you're certainly right that voting against it achieves the same purpose. So I now have an opportunity to talk about this particular non-amendment?

**The Chair:** Yes. We can discuss this, certainly. We can discuss your recommendation.

**Mr Garry J. Guzzo (Ottawa West-Nepean):** Free advice is always worth the price.

**Ms Churley:** It certainly is. We get a lot of free advice around this place.

This last section is an extremely controversial one, one where we heard both sides of the issue. The section deals with the **question of municipal bylaws**. We heard from AMO and we heard from many in the farm community and from communities, as well as from environmentalists, and we heard both sides of the issue.

I understand the concerns expressed on both sides, but I was particularly concerned about the submission by AMO. I want to remind people about AMO's concerns and what they had to say in their submission. They generally supported the bill and the movement forward. They had some concerns, and one of their major concerns was the municipal planning powers. I've made this point before, and I want to make it again for the record.

What AMO said in their submission is, "The legislation draws into question the impact of provincial regulation of nutrient management on the planning powers of municipalities. Section 60 would make municipal nutrient management bylaws inoperable if the subject matter is already addressed in regulation.... It is not yet clear which authority will decide whether a municipal bylaw, especially one based on the Planning Act, conflicts with a provincial regulation."

They go on to say, "This legislative override may restrict the ability of councils to limit large-scale operations near sensitive areas,... aquifers, environmentally sensitive lands, urban areas, beaches or tourism areas." They go on to express real concern about that. They made the point that municipalities need to have the ability within their own planning acts to have a say in land use and land planning in their own regions.

1710

I mentioned previously that there was a Supreme Court case recently in Hudson, Quebec, around pesticide use. It was the same kind of situation, where the municipality of Hudson tried to ban pesticide use in its own municipality. It went all the way to the Supreme Court because the province said they didn't have the authority to do that. The Supreme Court ruling was very

clear that in fact they did have the authority in their own municipality to have some control over land use.

That's the same kind of situation here, and I'm very concerned when AMO, which, as you know, represents almost all of Ontario's 447 municipalities and a membership representing 98% of Ontario's population—they point out that of course many of these members come from rural and small-town Ontario. ROMA was part of their presentation.

It is also true that community groups, environmental groups and others expressed this same kind of concern. I'm not going to cite some of the things that have happened in certain areas that we were all made aware of at committee level and why this is so important to municipalities.

I recognize the other side, and it was presented to us as well. There is concern by some of the farm groups that nuisance—tourists and more people from the city move into rural areas and start movements to try to get rid of farms. These kinds of concerns were brought up, but one of the arguments we continually make is that local government—in most every other area of legislation we bring in, we try to the extent possible with the Municipal Act, although it hasn't gone very far in that direction. There's more and more of a call from municipalities, not just cities but smaller towns as well, since they've been downloaded so many more responsibilities, that they have the authority to make decisions, to raise money and to do the things to allow them to do the job they have been handed. This goes against the grain. It's taking away a power they already have and many feel they need because of the controversies and difficulties in some areas where there are already huge problems, which we've all been told about.

That's why I put the amendment forward, recognizing that it's been ruled out of order. Of course I have the opportunity to vote, but I just wanted to put on the record why I put this before us.

**Mr Galt:** I'd like to make a couple of comments to help clarify this. The intent of section 60 is for the regulations to supersede municipal bylaws that are in place at the time the bill is passed, as well as the new ones developed later. This section is intended to deal with any municipal bylaws, whether they are passed under the Municipal Act, the Planning Act or any other authority that allows the passing of bylaws. One of the needs that has driven the preparation of the Nutrient Management Act, 2001, was the patchwork of municipal bylaws that currently govern the land application of nutrients. There was an expressed need from the farm organizations, the municipalities and other stakeholders for a comprehensive approach to the issue that would include tough, clear standards.

To delete this clause would allow for the current system to continue. There would be no certainty for the farm operator from one municipality to the next. There would be no clear standards, as they would vary from township to township. To encourage this type of system would negate the value of Bill 81 completely.

This section is essential to the creation of a uniform set of standards that can be based on individual, site-specific features. One set of standards does not automatically assume that the rule is the same across the province. One set of standards means that the same environmental checks are taken into account across Ontario, based on such information as the specific local soil type, slope and area of environmental considerations. The same standard would be applied to ensure that all municipalities are treating the farm operations in a consistent, safe, environmentally protective manner.

**Mr Peters:** We won't be supporting the resolution; rather, we will be voting in favour of section 60. A lot of it is because we want to have a level playing field province-wide and the concern that that wasn't necessarily the case right now with different bylaws.

But there are some issues that are going to have to be addressed in the regulations. The one that really stands out to me was the land ownership question in various bylaws. One township said you had to own 20% of the land, one said you had to own 30%, another said you had to have 40% of the land. That's going to be a real challenge and something that's going to have to be addressed at the regulatory stage. I would hope that the ministries—either environment's or OMAFRA's—legal counsel have reviewed situations such as West Perth, where there was a legal challenge to a bylaw. Have these court challenges been reviewed and is the government confident that we're not going to end up having small court challenges across this province? More importantly, has the West Perth case been examined in light of what's in front of us?

**The Chair:** Further discussion? Are the members ready to vote? Shall section 60 carry? All in favour? Those opposed? I declare section 60 carried.

I see no further amendments. We could—

**Mr Peters:** I don't know whether the parliamentary assistant is in the position to give us some idea as to—maybe this has to be left to the minister. We've got to get this passed. It's only had first reading.

*House division bells were heard to ring.*

**Mrs McLeod:** Excuse me for interrupting. I'm not sure whether this is quorum or if this is actually a vote call. There was some thought that the debate might collapse and the vote would be called early.

**Ms Churley:** I think it may be a vote, because I was going to go in and try to speak, but they said it was too late.

**Mrs McLeod:** It is a vote. We'll have to adjourn the committee, Mr Chair, and resume for the final consideration after the vote.

**The Chair:** How many minutes do we have?

**Mrs McLeod:** Mr Chair, if you're thinking of not coming back, as the opposition whip for the committee I did want to raise with you the fact that we will be concluding clause-by-clause on this bill with two days remaining to the committee. I wanted to ask you to have some discussion about how we will use the remainder of the committee's time, so I would appreciate being able to come back after the vote.



**The Chair:** OK. Is the committee amenable to that? We will recess for the vote.

*The committee recessed from 1719 to 1741.*

**The Chair:** If we could reconvene, committee, as I understand it, we passed section 60. It did carry. When the bells started ringing, I pointed out that there were no amendments brought forward for section 61 on. For the purposes of voting, shall I collapse sections 61 through to and inclusive of section 67? I'll put the question. Shall sections 61 to 67, inclusive, carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 81, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? I will so do.

**Mr Peters:** On Bill 81, before you go to something else, I wanted to make a couple of comments. I hope that at some point maybe the minister can give us some idea of the timelines and spell out what the consultation process is going to be for the regulations.

I want to go on the record. One of the things we didn't hear a lot about—and we talked about this—was the whole question of septage and pulp and paper. I would hope that as the regulations are being developed, we're going to have some further work done. Septage is potentially going to be a big issue. If we're not dumping it on the fields, which is the right way to go, we've got to find a place to put it. You've got cottagers all over the north and a lot of rural properties on septic systems, so that's an issue. We need to put the challenge out to do that.

I just want to go on record and say thanks to George Garland. George was the one trouper who, like yourself, Mr Chairman, made it to all the locations. George did a lot of work leading up to this legislation and in talking to people. I just want to offer my thanks to you, George, for what you've done.

**The Chair:** Certainly on behalf of the committee we do wish to thank George, and for other assistance we received from staff when we were on the road.

**Mr Galt:** If I can toss in a comment, Chair, I support Mr Peters in his comments on Mr Garland as well as the rest of the staff. They've been very diligent in working to get this bill through. I know we dragged George all over the countryside prior to the committee meeting, when the task force was out there going hither and yon. It has been quite a long ordeal, and they're not finished yet. They have a lot of work with regulations.

Just a comment or two. This is really preventive legislation we're putting through to try and ensure that water and land and air are well protected. I thought maybe you were going to ask about the speed of the legislation going through and how quickly that would happen. I can assure you that with all-party agreement we could get it through tomorrow, through second and third reading, if the other parties were so inclined.

**Mr Guzzo:** If you had it printed.

**Mr Galt:** Well, we might even be able to do it with unanimous consent. It's amazing what can be done. Then we could get on with the regulations and might have

some in place for the 1st of January. Maybe the other two parties would like to—

**Ms Churley:** That's not going to happen.

**Mr Galt:** Well, they're anxious to get things moving. We could get on with consultation in December and get some of those priorities in place. I know you're enthused about the legislation and look forward to its speedy passage.

**The Chair:** Should we maybe wrap up any discussion on Bill 81, and then if there's other discussion—

**Ms Churley:** If I can still talk, I want to join in thanking the staff for their very hard work on this bill. I know they've worked extremely hard. Make that unanimous.

In response to Mr Galt on the possibility of passing this bill immediately, I want to reassure the staff that that's not going to happen. I showed good faith today. We were allocated three days to do the amendments for this bill, but I recognized the urgency, although, as you know, I have lots of problems with it. I'm interested in the regulations and that being done as speedily as possible, recognizing that the staff is going to have to put a lot of work into making that happen.

There are many other important bills as well that we're trying to get through the House. I imagine that this one will be subject to a long list of negotiations of what gets passed and what doesn't. I believe we'll be discussing that. We now have two extra days that were allocated for clause-by-clause on this bill, and those days are now available. But as you know, Mr Galt, there are a lot of other bills sent to other committees that haven't been heard yet. I just want to put on the record that New Democrats are happy to sit right until Christmas Eve and we're happy to come back in early January and continue debating and passing important legislation.

**Mrs McLeod:** Mr Chair, we had some informal discussion prior to the committee coming back. The issue I wanted to raise, and I'll just mention it for the record, is that there were three days time-allocated for clause-by-clause on Bill 81. We've completed the clause-by-clause hearing in a day, and that means there are essentially two days of scheduled time that will not be used for government business. We have Bill 86 before us. It can be moved up by one day, according to the subcommittee report. Whichever days are used for Bill 86, it still leaves us with two days scheduled for the committee. There are a number of outstanding private members' bills, and I would ask that the subcommittee be convened so we can consider using this committee time for private members' business.

**The Chair:** I think all three parties have discussed several times for a subcommittee meeting tomorrow?

**Mrs McLeod:** Yes.

**Ms Churley:** It's either going to be at 1 o'clock or right after routine proceedings.

**The Chair:** Any other discussion before we adjourn? This standing committee is now adjourned.

*The committee adjourned at 1749.*











## CONTENTS

Tuesday 27 November 2001

<b>Nutrient Management Act, 2001, Bill 81, <i>Mr Coburn</i> / <b>Loi de 2001 sur la gestion des éléments nutritifs, projet de loi 81, <i>M. Coburn</i></b> .....</b>	J-657
--	-------

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Ms Marilyn Churley (Toronto-Danforth ND)

Mr Doug Galt (Northumberland PC)

Mr Steve Peters (Elgin-Middlesex-London L)

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Ms Catherine McNaughton, legislative counsel

J-29



J-29

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 3 December 2001

# Journal des débats (Hansard)

Lundi 3 décembre 2001

**Standing committee on  
justice and social policy**

Portable Heart  
Defibrillator Act, 2001

**Comité permanent de la  
justice et des affaires sociales**

Loi de 2001 sur les défibrillateurs  
cardiaques portatifs



Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Monday 3 December 2001

Lundi 3 décembre 2001

*The committee met at 1601 in committee room 1.*

## SUBCOMMITTEE REPORTS

**The Chair (Mr Toby Barrett):** Good afternoon, everyone. We have two orders of business. On the agenda for today is Bill 51, An Act to help save the lives of Ontarians who suffer from cardiac arrest by promoting the widespread availability and use of portable heart defibrillators in public places. We have clause-by-clause consideration of that bill, but before that we have several reports of the subcommittee dated November 28, 2001. We will turn to that agenda item at this point.

**Mr Mike Colle (Eglinton-Lawrence):** Perhaps I could read the first report of the subcommittee.

Your subcommittee met on Wednesday, November 28, 2001, to consider the method of proceeding on Bill 105, An Act to amend the Health Protection and Promotion Act to require the taking of blood samples to protect victims of crime, emergency service workers, good Samaritans and other persons, and recommends the following:

(1) That the committee meet on Tuesday, December 4, 2001, for public hearings and clause-by-clause consideration of the bill.

(2) That the chief medical officer of health be invited to make a presentation before the committee.

(3) That the legislative research officer obtain relevant information from the privacy commissioner, as well as similar legislation from other jurisdictions.

(4) That amendments for the bill should be provided to the clerk by Friday, November 30, at 12 noon.

**The Chair:** You have the motion to approve the subcommittee report. Is there any further discussion on this subcommittee report?

**Mrs Tina R. Molinari (Thornhill):** Just a question of clarification, Mr Chair: We have this report. It says we're dealing with Bill 105 on Tuesday, December 4, then the next one is going to be dealt with on December 3, so just your guidance on the process here. I think the original date for this committee to deal with Bill 105 was December 4, because we anticipated some of the other business dealings. Now we have today, which is a day that is not taken up by another bill, to deal with—I'm sorry, I think I'm wrong.

**Mr David Tilson (Dufferin-Peel-Wellington-Grey):** Bill 51 is today. Bill 105 is tomorrow. Isn't that the understanding?

**Mrs Molinari:** It's my error, Mr Chair. I apologize.

**The Chair:** Is there any further discussion on this subcommittee report concerning Bill 105? Are the members in favour of this report? That motion is carried.

**Mr Colle:** I have another report of the subcommittee.

Your subcommittee met on Wednesday, November 28, 2001, to consider the method of proceeding on Bill 51, An Act to save the lives of Ontarians who suffer from cardiac arrest by promoting the widespread availability and use of portable heart defibrillators in public places, and recommends the following:

(1) That the committee commence its clause-by-clause consideration of the bill on Monday, December 3, 2001.

(2) That amendments for the bill should be provided to the clerk by Friday, November 30, at 12 noon.

**The Chair:** We have the motion on this second subcommittee report. Are there any comments or discussions? With respect to this report, all in favour? This report is carried.

**Mr Colle:** I have a third report of the subcommittee.

Your subcommittee met on Wednesday, November 28, 2001, to consider the method of proceeding on Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act, and recommends the following:

(1) That on December 10 and 11, the committee conduct its clause-by-clause consideration of the bill.

(2) That amendments for the bill should be provided to the clerk by Friday, December 7, at 12 noon.

**The Chair:** Any comments on that subcommittee report? Shall that report carry? Carried. That concludes the reports of the subcommittees.

PORTABLE HEART  
DEFIBRILLATOR ACT, 2001LOI DE 2001 SUR LES DÉFIBRILLATEURS  
CARDIAQUES PORTATIFS

Consideration of Bill 51, An Act to help save the lives of Ontarians who suffer from cardiac arrest by promoting the widespread availability and use of portable heart defibrillators in public places / Projet de loi 51, Loi visant à contribuer à sauver la vie des Ontariens qui souffrent



d'un arrêt cardiaque en promouvant la disponibilité et l'usage généralisés de défibrillateurs cardiaques portatifs dans les lieux publics.

**The Chair:** Our next order of business will be clause-by-clause consideration of Bill 51.

Are there any comments or questions with respect to sections or amendments? We could begin with section 1.

**Mrs Molinari:** Is there an opportunity for some opening comments before we begin the clause-by-clause?

**The Chair:** Yes, if the committee's amenable to that. Shall we start with some general opening comments?

**Mr Colle:** If I could just comment, as you know, we had a couple of days of, I thought, very informative hearings here in Toronto and Ottawa. I put forth this bill. I thought the presentations and the comments and questions by the members of committee were very helpful in trying to find ways of perhaps improving the bill and making it basically easier to administer on a provincial level.

What I have done over the intervening time is that I've come forward with some amendments. The basic thrust of my amendments, as you'll see, is to make it not as compulsory on the ministry; in other words, the wording is changed to the ministry "may" come forward with certain protocols and certain procedures, thereby giving latitude to the ministry, given the fact this is a totally new direction in this area of first responders. I've made those. I'm just trying to facilitate starting the benchmarks for such a program. I've made it less restrictive, more reliant on the good judgment of the ministry, its officials and the minister, and also to make it clear the program would be introduced subject to the recommendations of prescribed stakeholders as selected by the ministry.

In other words, whether it be the first responders or the people in the private sector or the medical profession, they could make up a stakeholders committee that would be in consultation with the minister as these decisions are made that are outlined in this bill. In a nutshell, those are the two areas where I've made the most significant changes, giving the ministry the mandate to decide whether and where they feel it is important and vital, and to make that decision based on their consultation with their professionals and with stakeholders in the field of emergency first response.

1610

**The Chair:** Any further general opening comments before we begin clause-by-clause?

**Mrs Molinari:** I have been involved in the hearings on this bill in the last little while. I've also spoken to Ministry of Health staff. I need to make some comments.

Bill 51 calls for the widespread availability and use of portable heart defibrillators in public places, including those under provincial and municipal jurisdiction and privately owned buildings such as shopping centres, arenas and stadiums. This bill would require that the Ministry of Health and Long-Term Care develop training programs and protocols in the appropriate use of this equipment, also known as automatic external defibrillators, and oversee this program throughout the province.

While the government is supportive of the intention and purpose of Bill 51, we view public access defibrillation programs as a local community initiative that should be developed and implemented at a local level in accordance with local needs and resources. Indeed, as we've heard through the consultations, cities such as Windsor, Ottawa and Mississauga, to name a few, have already implemented successful public heart defibrillation programs. These programs should be used as a model for other interested municipalities to employ, if desired.

As well, there are many organizations and private businesses currently engaged in successfully promoting and implementing this initiative. Many recognized agencies and private businesses, such as the Heart and Stroke Foundation of Ontario, the Red Cross, St John Ambulance and others have already developed AED training programs and protocols for the lay rescuer, and have trained hundreds of non-health care professionals in the use of AEDs.

Implementation of the program would present substantial cost and complex logistical implications to the Ministry of Health, municipal organizations and private enterprises that have jurisdiction over buildings targeted for AEDs.

The passage of Bill 51 would require probably more than 10,000 buildings to be equipped with one or more AEDs as part of a required public access defibrillator program. The ministry would need resources to meet its legislative requirements, such as the development and administration of a training program and extensive monitoring and inspection to enforce the legislative requirements. Once established, a public access defibrillator program would also have a number of ongoing impacts on the business or public place in which the device is located. There is potentially added liability for a business or building owner to maintain the AEDs and trained staff required by Bill 51.

The cost of AEDs begins at approximately \$5,000, pads at \$35 per pair, and training costs generally exceed \$200 per person. The AED has an expected life of seven to 10 years regardless of use. The AED pads have a life of two years regardless of use. AED pads are single use and must be replaced following use. Training of responders must be maintained. Battery life is three to five years regardless of use. Staff turnover and vacations require ongoing training of new staff. Regular quality assurance and preventive maintenance is required for AEDs, all of which will increase costs.

It is for these reasons that the government is not supportive of this bill at this time. Again, let me reiterate that we are supportive of local municipalities undertaking such an initiative—we've heard the successes from the presentations—in accordance with local needs and local resources. Several municipalities, as I've stated, have already implemented such programs, and these should be used as templates for other interested municipalities.

**The Chair:** I see a number of amendments. I would ask for a motion on the—

**Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** Opening comments, Mr Chair?

**The Chair:** Certainly.

**Mr McMeekin:** I appreciate the comments made by my two colleagues. Knowing a little bit about this with my health care background, I think there are a lot of concerns that have been raised, most of which my colleague has, I think, attempted to respond to in his amendments.

The one overriding question that hits me with respect to this is, how many lives might be saved? I know there's a cost to a lot of this. I don't think there's an expectation that this would be a requirement. I think Mr Colle has made it clear that those who have staff willing to be trained for some occurrence and who are prepared to struggle with the issue of the very essence of having the opportunity to save a life is something this bill really speaks to. I don't know how you put a cost on that.

The other aspect I found curious was the reference to local initiation of projects. A number of municipalities specifically don't embrace and haven't in the past embraced this kind of action because they felt there hasn't been the enabling legislation there to do that. In fact, and Ms Molinari may not be aware of this, we specifically made resolutions, amendments, during the hearings on Bill 111 that would have allowed this, but they were defeated by the government members who were here. It strikes me as passing strange that it would be raised at this point, when we made the specific amendments that would have allowed and empowered municipalities to embrace the suggestion the honourable member opposite mentioned. It's about saving lives. I guess that's my bottom line.

**The Chair:** If we turn to section 1 of the bill, I would entertain a motion for an amendment.

**Mr Colle:** I move that section 1 of the bill be amended by adding the following definition: "'prescribed' means prescribed by the regulations made under this act." It's just a clarification of the definition.

**The Chair:** Any further explanation of that amendment?

**Mr Colle:** No.

**The Chair:** Any further discussion by any other member of the committee on this amendment? Are the members ready to vote on this amendment? This is found on page 1, the Liberal motion on section 1.

All those in favour? Opposed? I declare the motion lost.

Seeing no further amendments to section 1, shall section 1 carry? All those in favour? Opposed? Section 1 is lost.

On page 2, we have another amendment, to section 2, a Liberal motion.

**Mr Colle:** I move that section 2 of the bill be struck out and the following substituted:

"2. Subject to the recommendations of prescribed stakeholders or classes of stakeholders, portable defibrillators may be installed in readily accessible places in the following locations:

"1. Buildings under the jurisdiction of the province of Ontario, including buildings to which the crown in right of Ontario or a crown agency has title or of which the crown in right of Ontario or a crown agency is a lessee.

"2. Appropriate municipal buildings.

"3. Appropriate privately owned buildings to which the public has general access."

I don't know if—the ministry briefing—they read my amendments. That's what I can't figure out. They don't seem to take into account that there's no obligation on the government to do any of the installation. The intention of this type of amendment is, in essence, to put in provincial benchmarks and guidelines in consultation with stakeholders, so that you don't have a situation where in every municipality you have different rules and regulations on where this type of medical device could be used or how it will be used. That's what's happening right now. You've got a whole set of different rules in Ottawa than you have in Windsor, and then Toronto is implementing a whole new set of guidelines. So the medical practitioners are saying, "Why don't you have a set of guidelines that we could all understand?"

**1620**

Also, I talked to someone who put in a program at Cadillac Fairview who said, "If I go to London, they're asking me to put in certain criteria before I can go into my Cadillac Fairview building in London, but then in Ottawa there's a whole new set of different criteria." He said, "It's going to make it very difficult for us to train people or to work with the private sector, since there's such a hodgepodge of different regulations."

What I've tried to do with this amendment is basically say it's up to the provincial government to look at these jurisdictions and say to them that they may, in consultation with the stakeholders, be installed, subject to the ministry's deliberations. So there's no compulsion and there's no fixed cost. It's a matter of putting in a process here that's province-wide. That's what this amendment's all about.

**The Chair:** Further discussion? OK, are the members ready to vote?

On page 2, the Liberal amendment to section 2: all those in favour? Those opposed? I declare the amendment lost.

Section 2 itself: all those in favour? Those opposed? I declare section 2 lost.

Section 3: on page 3 we have a Liberal amendment.

**Mr Colle:** I move that subsection 3(1) of the bill be struck out and the following substituted:

"Guidelines

"3(1) In co-operation with prescribed health and emergency service stakeholders or classes of health and emergency service stakeholders, and with such other stakeholders or classes of stakeholders, including stakeholders from the private sector, as may be prescribed, the Minister of Health and Long-Term Care shall develop guidelines on the use and maintenance of portable defibrillators."



Just to reiterate, it's the same thing, where we're trying to get the ministry to take a lead on prescribing the norms that would be required. The sad thing is, inevitably this is going to happen, so then they're going to have to react after the fact when you have a hodgepodge of regulations already in place. I thought it would be prudent for the ministry to set up these guidelines in advance so you don't have these contradictory and different types of regulations and norms across the province. Right now, I don't know how many municipalities there are in the province: 500 or 600 left? You're going to have a whole real contradictory group of rules and regulations.

*Interruption.*

**Mr Tilson:** Mr Chair, do we need to see what's going on here?

**The Chair:** No.

**Mr Tilson:** As long as there are no bells?

**Mr McMeekin:** I can tell you what's going on. There was a recess around a point of procedure on the appropriateness of the motion. The Speaker has adjourned the House while he considers the item.

**The Chair:** OK. Sorry, Mr Colle. Continue.

**Mr Colle:** That's all. Basically I think it sets a provincial standard to develop these guidelines across the province.

**The Chair:** Any further discussion on this motion? Are the members ready to vote?

We're voting on the Liberal motion on page 3, an amendment to section 3. All those in favour of this amendment? Those opposed? I declare this amendment lost.

With respect to section 3, all those in favour of section 3? Those opposed? I declare section 3 lost.

Section 4: I see no amendments; section 4.1 is a new section. Any discussion on section 4? Seeing none, are the members ready to vote on section 4?

All those in favour of section 4? Opposed? I declare section 4 lost.

New section 4.1: on page 4 we have a Liberal motion.

**Mr Colle:** I move that the bill be amended by adding the following section:

"Regulations

"4.1(1) The Lieutenant Governor in Council may make regulations,

"(a) prescribing stakeholders or classes of stakeholders that make recommendations on whether portable defibrillators should be installed in buildings;

"(b) prescribing stakeholders or classes of stakeholders that shall be consulted in developing the guidelines on the use and maintenance of portable defibrillators;

"(c) prescribing guidelines on the use and maintenance of portable defibrillators in public places.

"(2) A regulation made under this section may be general or particular in its application."

This is just an opportunity to ensure there are regulatory powers for the minister so that the minister can make decisions in terms of what further refining of guidelines is required in terms of the installation and the timetable etc. In essence it is giving the minister power to

invoke regulations to implement some of these issues that come up from time to time.

**Mr McMeekin:** The thought occurs to me, based on some of the comments we heard earlier from the member opposite which professed, I thought appropriately and well, the concern and the reference to local implementation, can anyone answer whether it is the intent of the government that the Ministry of Health will be looking at regulations and whether these will be regulated? Or will municipalities be encouraged—a wink is like a nod to a blind horse—to develop programs in the absence of regulations? That presumably was the thrust of the government's original comments about why they wouldn't be supporting it: the difficulty around regulations.

It seems to me that if this bill isn't embraced—and I have a feeling, Mike, that it's probably not going to be—at the very least there ought to be some undertaking on the part of the government to look at this important issue and to in fact cause some investigation to be done around the regulations which might be brought into play with respect to a more widespread use of defibrillators.

**Mrs Molinari:** I can just comment and basically reiterate that we are supportive of the local municipalities undertaking such initiatives. As we've heard from the presentations that were made during the hearings, there are a number of municipalities that are quite successful in their implementation. We're certainly supportive of those municipalities that take it on based on local needs.

**Mr McMeekin:** I still don't understand why it wouldn't have been embraced when we talked about the Municipal Act, when we looked at that. I suppose it was because it was a Liberal amendment, but I wouldn't want to get political. Anyhow, enough said, Mr Chairman.

**The Chair:** Any further discussion? Seeing no further discussion, we are now dealing with the Liberal motion on page 4. Are members ready to vote?

All those in favour? Those opposed? I declare the amendment lost.

With respect to section 4.1, all those in favour? Those opposed? I declare that section lost.

Section 5: I see no amendments. Are members ready to vote on section 5?

Shall section 5 carry? Those opposed? Section 5 is lost.

Section 6, the short title: all those in favour of section 6? Those opposed? I declare section 6 lost.

We will now vote on the long title. Those in favour? Those opposed? I declare the long title lost.

The next question—I just want to check. Because no sections and no amendments have been carried—I can't ask if there's no bill, essentially. The bill has been defeated to this point.

Therefore, shall I report that the bill be not reported?

1630

**Mr Bob Wood (London West):** On a point of order, Mr Chair: Perhaps you could explain just how this works. No clauses of this bill have been passed, so what report does this committee make to the House?

**The Chair:** I, as Chair, would certainly inform the House, but I would have no report, essentially. I will stand and report, but I have nothing to report.

**Mr Wood:** I guess what I'm not grasping here—if a bill passes, it then is reported to the House and the House either adopts—

**The Chair:** If the committee is amenable to the Chair doing that.

**Mr Wood:** Let us assume for the sake of argument that this bill had received support in some form. It would then be reported to the House and the House would adopt that report or not adopt it, as the case may be. So what's the status of this bill after whatever it is we're going to do is done? What is it we're going to do, if anything, and what's the status of the bill?

**The Chair:** The status of this bill is that this bill has been defeated to this point in this committee.

**Mr Wood:** I understand that. What I'm asking for guidance on is, what is the next step? Do we report that we recommend the bill not proceed, or do we just report that all sections were lost? What do we do in relation to the House?

**The Chair:** I guess on behalf of the committee I as Chair will make a report to the House. I'm not clear on the exact wording of what that report would be. Mr Galt? And I can ask the clerk to explain this too.

**Mr Doug Galt (Northumberland):** My thinking would be that you would report that hearings had been held and that as a result of the hearings there is no report to proceed further with this bill because there is no bill. But I think you need to report that hearings were held.

**The Chair:** I do have to report to the House on what occurred. Could I ask the clerk to better describe what may occur.

**Clerk of the Committee (Mr Tom Prins):** The committee is obligated to deal with all the bills before it. So by reporting back, basically the Chair would be reporting back that all the sections had been defeated and then it's out of the committee's hands. If members voted against that, then the bill would remain in committee, no report would be made back to the House, and it would just stay here at committee.

**Mrs Molinari:** Do we have to then approve that the Chair report in the Legislature that the bill was defeated at committee?

**Clerk of the Committee:** That's what the report would indicate.

**Mrs Molinari:** We would have to vote on that?

**The Chair:** I need the committee's approval to go back to the Legislature to report.

**Interjection:** But you have nothing to report.

**The Chair:** Exactly. I have no report. But I'll still stand and indicate that.

**Mrs Molinari:** With all due respect, Mr Chair, you would report the fact that a bill was put before the committee, hearings were held, and the bill was defeated at committee.

**The Chair:** Yes. I don't know how much detail I'll get into. A lot of that's in Hansard.

**Mr Galt:** You have a report: there's no bill to bring back to the Legislature.

**The Chair:** Traditionally, a committee Chair, as I recall, identifies the committee and makes the motion and really doesn't get into the detail of what the particular legislation was. It's a very terse, brief report.

**Mr Tilson:** I think the question is, how do we get it out of the committee? I know we can't defeat a bill, can we? This committee can't defeat a bill. The bill's—

**Mr Colle:** That's the House's problem.

**Mr Tilson:** Yes. Only the House can defeat or pass a bill. The question is, how do we get it out of here? How do we get it out of this committee and back into the House? It seems to me that the process is that you make a report, which is either carried or not carried.

**The Chair:** Yes, that is my understanding. There could be a vote on that.

**Mr Tilson:** Otherwise it stays in here forever.

**Mr Wood:** What is its status in the House?

*Interjection.*

**Mr Wood:** It goes back to the House, simply that it has gone to committee and it's now back in the House, so they'd have to refer it again to another committee if they wanted it further considered. It's had second reading, and that's it.

*Interjections.*

**The Chair:** Just to summarize—and shortly after I finish an explanation, I will be asking permission of the committee to report to the House, and what I report to the House is what occurred here. It's in writing; you know, certain amendments, certain sections, in this case, were declared lost. I will report to the House.

**Mr Wood:** What I'm not grasping is, when you do that, the House then adopts that report, the same way they normally adopt a committee report? What happens?

**The Chair:** Sometimes there's a vote.

**Mr Wood:** No, but they always adopt it or not adopt a committee report, do they not?

**Mr Galt:** Sometimes it's put to a vote.

**Mr Wood:** Yes. It may or may not be voted on, but they always adopt it, or not adopt it. I guess they could, if they wanted, not adopt.

**Mr Tilson:** That's why you're being paid the big dollars.

**The Chair:** And if they adopt the report of this committee, the bill is officially dead as far as the Legislative Assembly is concerned, is my understanding.

**Mr Wood:** Is that the case? Without wishing to be cruel about this—we may as well deal with it—obviously the committee does not support the bill, and if the House agrees with that, we may as well take the bill off the order paper. There's no point in having it there if indeed it doesn't have the support of the House in detailed form.

**The Chair:** I guess that's up to the Legislative Assembly.

**Mr Wood:** Just so that I've got this right, we are going to report that none of the sections were adopted, and if the House accepts that, the bill then goes off the order paper. Is that what happens?



**Mr Galt:** We can't take it off the order paper.

**The Chair:** The clerk could check as far as the order paper, if you wish. That's getting beyond what this committee does.

**Mr Wood:** I'm trying to get clear in my mind what it is we're doing—

**The Chair:** Let's wait a minute and we can get an answer to that question too.

**Mr Wood:**—so that I understand what we're doing before we vote on it.

**Clerk of the Committee:** The bill would come off the order paper.

**Mr Wood:** It comes off the order paper and what happens?

**Clerk of the Committee:** If the Chair would report back to the House that the bill not be reported and the House adopts that motion, at that point the bill would come off the order paper.

1640

**Mr Wood:** OK. The Chair is then going to ask us if he should report to the House that the bill should not be reported.

**Clerk of the Committee:** Right.

**Mr Wood:** If the House adopts that report, it then goes off the order paper.

**Clerk of the Committee:** Yes.

**Mr Wood:** Thank you.

**The Chair:** I do wish to put this final question. Maybe just so that people understand the question I will be putting to the committee, normally a Chair—I wouldn't say normally, but in other cases the standard question is, shall I report the bill to the House? However, in this case the bill was defeated, the amendments, the sections, those several titles. So if the bill has been defeated, which it has to this point, the question I put then—and I will put it in a minute, but I'll let you know what the question is: shall I report that the bill be not reported? That's the question that's coming. As Chair, I am in favour of doing a report tomorrow. However, it's in your hands. Discussion?

**Mr Tilson:** Can the clerk enlighten us at all about the procedure?

**Mr Wood:** He already has.

**Mr Tilson:** Has he?

*Interjections.*

**The Chair:** Sure. Anything further? You understand the question. You heard the question.

*Interjections.*

**The Chair:** Rather than the normal question, shall I report the bill to the House?, in this case the bill has been defeated, so the question now becomes, shall I report that the bill be not reported?

**Mr Colle:** A recorded vote.

**The Chair:** We could have a recorded vote. Are the members ready to vote? No further discussion?

**Mr Tilson:** No, I'm not ready.

**The Chair:** All right. Further discussion?

**Mr Tilson:** I don't understand the procedure. We cannot defeat this bill. This committee, I don't believe, can defeat this bill.

**The Chair:** I think you just have, sir.

**Mr Tilson:** You say we can.

**The Chair:** By your votes.

*Interjection.*

**The Chair:** To this point, this bill has been defeated.

**Mr Tilson:** That's true.

**The Chair:** As I explained, and we can ask the clerk for further detail, because the bill has been defeated to this point, the question changes from the standard question and the question now that a committee Chair would put is, shall I report that the bill be not reported? That's the question that's coming now, as far as procedure.

**Mr Colle:** On a point of order, Mr Chair: Would it be normal for the House to be apprised of what has transpired? You're telling us not to inform the House of what's transpired here.

**The Chair:** Yes, it sounds that way, but I understand that I will still be approached by a page and I will give the page all the details—the votes, the fact that the sections were lost, the amendments were lost—and that would go to the Speaker. Even though the question says "not reported," I'm still handing over the report.

**Mr Colle:** Yes, but you can't; then you're contradicting the directions of the committee, which say not to report. It's not on.

**The Chair:** I haven't asked the question yet—

**Mr Wood:** You report that the committee says the bill should not be reported. If the House adopts that, that's the end of the bill.

*Interjections.*

**Mr Wood:** In effect, the committee is saying to the House, don't proceed with this bill, and if they adopt that, then they won't proceed with it.

**Mr Colle:** Yes, but there's no bill. You've gotten rid of that option from the House. They don't have that option.

**Mr McMeekin:** Here's our constitutional expert.

**Mr Tilson:** Uh-oh, we'll be here till 6 now. We'd almost got out of here.

*Interjections.*

**Mr Colle:** There's nothing left to report. Every clause has been defeated, even the name and the short title. The question is, have we superseded the powers of the Legislature by basically getting rid of the bill, where there's nothing to report back to the House with?

**The Chair:** Any further discussion?

*Interjections.*

**Mr Tilson:** What's the motion, Mr Chairman?

**The Chair:** In a case like this where the bill has been defeated to this point, normally the question is, and I quote, "Shall I report that the bill be not reported?" That's the question that is normally given.

**Mr Peter Kormos (Niagara Centre):** I think the word is that this committee is now functus. It has completed its consideration of the bill. The bill has been defeated in committee, regrettably, but there's nothing to

report back. The committee is now functus. The committee has nothing left to consider, short of another bill.

**Mr Tilson:** I ask the question, do we have to, I'll use the term, get it out of this committee, back into the House? Do we have to even do that?

**The Chair:** You have to decide that. I'm going to ask that question, "Shall I report—

**Mr Galt:** To the clerk, which tidies it up the best? Leaving it here or getting it back and having no bill to report?

**Mrs Molinari:** He already told us what we need to do. We need to pass that motion.

**Clerk of the Committee:** If you don't pass the motion, the bill would remain here in committee. If you do pass it, then the Chair would be making a report back to the House.

**Mr Kormos:** With respect, there is no bill anymore.

**Mrs Molinari:** We've received the advice of the clerk on how to proceed with this. The advice was given that we vote in favour of the Chair making a report to the Legislature that says that you will not report the bill, or whatever the wording is—

**The Chair:** Just for clarification, I did not hear the clerk tell you to vote in favour of it. OK? Just a point of clarification. Sorry to interrupt. Go back again.

**Mrs Molinari:** OK. What I'm trying to say, then, is that we have received the advice from the clerk on how to proceed now that the bill has been defeated. Every clause has been defeated, and the bill has been defeated in committee. The clerk has given the committee advice on how to proceed with this to get it out of committee and into the Legislature and, Mr Chair, you have the motion that will be put on the floor for us to consider, based on the events that occurred in this committee. Quite frankly, I don't know why we're still discussing it.

**The Chair:** I understand the question that I will be asking does seem a little confusing. I hear what you're saying. Maybe it could have been worded a little better.

**Mrs Molinari:** I have faith in the advice of the clerk. If that's what the clerk has stated that we need to do, then I suggest we proceed.

**Mr Kormos:** Once again, with respect, the Chair doesn't report to the House. The Chair, for instance, doesn't report attendance. It doesn't say, like a social column, "The committee met from 3:30 until 6:00, and a good time was had by all." The Chair reports bills back to the House. That's what the Chair's obligation is, in my submission. The Chair's obligation is to report bills back, to be return to the House, having been removed from the House and laid on the committee's table, in effect. Were the bill amended, that would be the bill you would report back. In other words, the fruits of the committee's labour would be what's reported back.

This committee has defeated every element of this bill. Had the committee not defeated the long title, for instance, the report back to the House would have been Bill 51 with a title and a blank page, literally. That would be the report back to the House. But the committee doesn't have anything to report. It can't artificially concoct some-

thing, because it isn't your job to report the little niceties, and who served tea at committee that afternoon. The Chair is required to report back bills.

So I'm putting to you that now you have no bill. Yes, this committee defeated, in every respect, Bill 51. It would have been interesting because it would have been a novelty, and certainly would have gotten some press, and it would have been dramatic for Mr Colle to be able to go to the press with Bill 51 and the long title, "Blank after committee," but the committee has even left the front page blank. There is no bill. The bill's gone. There's nothing to report back, and you can't report back nothing.

**Mrs Molinari:** How do you get it out of committee?

**Mr Kormos:** No, it doesn't exist anymore.

**Mr Wood:** You should hear the clerk's explanation.

**Mr Kormos:** But it doesn't exist anymore. Bill 51 doesn't exist.

**The Chair:** I will be taking that piece of paper, however, and there will be "lost, lost, lost" written on it and initialled by the Chair, and that report is going to be reported to the House.

**Mr Tilson:** Mr Chair, will you repeat the question?

**The Chair:** Certainly. If the bill had carried, then the question would be, shall I report the bill to the House? However, this bill has been defeated to this point. So the question changes. The question that I will be asking is, shall I report that the bill be not reported?

I will now ask that question. I understand there was a request for a recorded vote. Are the members ready to vote?

**Mr Colle:** Yes, a recorded vote. Is it possible also to get some kind of written explanation? I think this is unprecedented. I don't think there's ever been a bill where even the title has been defeated in committee, so I'd like to somehow get our staff to report on that, on what that does to the procedures.

**The Chair:** The clerk has advised there was another situation like this, this session. That's in Hansard.

**Mr Colle:** I'd like reference to that. I'd like to see that.

**The Chair:** That could be forwarded to the members.

All right then, no further discussion. Are the members ready to vote on the question I'm about to ask? This is a recorded vote.

Shall I report that the bill be not reported? All those in favour?

#### Ayes

Galt, Molinari, Tilson, Wood.

#### Nays

Colle, McMeekin.

**The Chair:** I will report that the bill be not reported. This committee is now adjourned.

*The committee adjourned at 1652.*









## CONTENTS

Monday 3 December 2001

Subcommittee reports .....	J-671
Portable Heart Defibrillator Act, 2001, Bill 51, <i>Mr Colle</i> /	
Loi de 2001 sur les défibrillateurs cardiaques portatifs, projet de loi 51, <i>M. Colle</i> .....	J-671

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### Chair / Président

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### Vice-Chair / Vice-Président

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### Substitutions / Membres remplaçants

Mr Mike Colle (Eglinton-Lawrence L)

Mr Doug Galt (Northumberland PC)

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot L)

Mr David Tilson (Dufferin-Peel-Wellington-Grey PC)

Mr Bob Wood (London West / -Ouest PC)

#### Clerk / Greffier

Mr Tom Prins

#### Staff / Personnel

Mr Albert Nigro, legislative counsel

CA2 CN  
XC14  
-577

Committee  
Publication

J-30



J-30

ISSN 1488-9080

**Legislative Assembly  
of Ontario**  
Second Session, 37<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**  
Deuxième session, 37<sup>e</sup> législature

## **Official Report of Debates (Hansard)**

**Tuesday 4 December 2001**

**Standing committee on  
justice and social policy**

**Health Protection  
and Promotion  
Amendment Act, 2001**

## **Journal des débats (Hansard)**

**Mardi 4 décembre 2001**

**Comité permanent de la  
justice et des affaires sociales**

**Loi de 2001 modifiant  
la Loi sur la protection et  
la promotion de la santé**

Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins





### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Tuesday 4 December 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Mardi 4 décembre 2001

*The committee met at 1610 in committee room 151.*HEALTH PROTECTION AND PROMOTION  
AMENDMENT ACT, 2001LOI DE 2001 MODIFIANT LA LOI  
SUR LA PROTECTION ET LA PROMOTION  
DE LA SANTÉ

Consideration of Bill 105, An Act to amend the Health Protection and Promotion Act to require the taking of blood samples to protect victims of crime, emergency service workers, good Samaritans and other persons /  
Projet de loi 105, Loi modifiant la Loi sur la protection et la promotion de la santé pour exiger le prélèvement d'échantillons de sang afin de protéger les victimes d'actes criminels, les travailleurs des services d'urgence, les bons samaritains et d'autres personnes.

**The Chair (Mr Toby Barrett):** Good afternoon, everyone. We're considering Bill 105, An Act to amend the Health Protection and Promotion Act to require the taking of blood samples to protect victims of crime, emergency service workers, good Samaritans and other persons.

We have a motion from the House:

"Resolved that this Legislative Assembly of Ontario direct that Bill 105, An Act to amend the Health Protection and Promotion Act to require the taking of blood samples to protect victims of crime, emergency service workers, good Samaritans and other persons, be considered by the standing committee on justice and social policy, Tuesday, December 4, for one day, at the end of which the Chair shall put every question necessary to dispose of clause-by-clause consideration of the bill; and

"That it then be reported back to this House and ordered for third reading.

"That when third reading of Bill 105 is next called, the question be put immediately without debate or amendment."

So we have clause-by-clause consideration on our agenda.

## CHIEF MEDICAL OFFICER OF HEALTH

**The Chair:** However, before that, we have a presentation from the chief medical officer of health, Dr Colin D'Cunha. Doctor, will you come forward, please?

**Dr Colin D'Cunha:** Good afternoon, members of the committee and honourable Chair. I apologize for not having a copy of my presentation pre-circulated, but I was only advised of the presentation on Thursday afternoon, and we've been working away on it until earlier today. With me is Christine Henderson, legal counsel from the Ministry of Health and Long-Term Care, who is assigned to public health matters with the ministry.

I'm honoured by your invitation to make submissions today on Bill 105, and as chief medical officer of health for this province, my submissions necessarily concern the impacts that Bill 105 may have upon public health in the province from a practical, a policy and a legal perspective.

It is very important that I say to you that I understand the difficult circumstances that emergency service workers, good Samaritans and others sometimes face. We are all grateful for their devotion and commitment in protecting the public safety.

Mr Chair, I wanted to be very clear at the outset that I fully support what I believe to be the intention of Bill 105, which in my view is to protect or enhance the health of emergency service workers and others. However, respectfully, I must also be clear in my submission that Bill 105 has not been drafted in a way to realize its laudable intention.

In my presentation today I will first discuss the existing framework that is designed to protect the health of emergency service workers and others in Ontario. I will also be discussing the OMA-OHA blood-borne diseases protocol for Ontario hospitals, as well as the current guidelines and protocol for the notification of emergency service workers, which also applies to good Samaritans.

Next, I will compare Bill 105 and the Health Protection and Promotion Act. In this part I hope to go into some detail about the differential purposes between Bill 105 and the Health Protection and Promotion Act. It should be noted that under Bill 105 the role of the medical officer of health shifts significantly. I will discuss that shift and whether, in my view, that shift is or is not a good thing. I will also discuss the difference between orders under Bill 105 and the existing public health legislative scheme and some of the problems with the test under Bill 105.

From a public health perspective, it is important that we all be clear where our focus should be in a possible



incident of disease exposure on the contact or on the at-risk person. I will discuss this as well.

Finally, I will discuss some of the significant issues the bill raises respecting confidentiality and privacy matters.

Turning my thoughts then to existing protocols, health care workers and emergency service workers, my initial comments are going to focus on the Ontario Hospital Association/Ontario Medical Association/Ministry of Health and Long-Term Care blood-borne diseases surveillance protocol for Ontario hospitals. This protocol was developed jointly by the expert committee of the Ontario Hospital Association and the Ontario Medical Association. On a personal note, I will point out that prior to my taking my current position I was a member of this committee. This protocol was first developed in 1990 and revised in May 2000 to keep it current on developments in the science field.

The blood-borne diseases surveillance protocol is approved by the Minister of Health and Long-Term Care under the regulation under the Public Hospitals Act. The purpose of that protocol is to provide direction to hospitals for preventing transmission of blood-borne pathogens from persons carrying on activities in the hospital, including health care workers to patients, or from patients to health care workers. The objective is to clearly establish a system for managing potential exposures to blood-borne pathogens, especially the hepatitis B virus, the hepatitis C virus and the human immunodeficiency virus, among persons carrying on activities in the hospital.

Exposed persons and their personal physicians are responsible for follow-up care and therapy if disease transmission occurs. In the protocols, the term "exposed person" refers to any person carrying on activities in a hospital who has been exposed to the blood and body fluids of patients through injury from a contaminated needle or sharp object, a splash onto a mucous membrane or non-intact skin, or a human bite that breaks the skin.

The importance of the reporting of exposure incidents is highlighted under the protocol. Procedures to be followed post-exposure are outlined for either unknown-source or known-source situations. Note, under the category of known source in the protocol is the following statement:

"Whenever there is a possibility that a health care worker has been exposed to a blood-borne virus, the issues of patient confidentiality and employee rights may conflict. This is an ethical dilemma for which there is no simple solution. The procedures were developed according to the principles of both practicality and respect for these apparently opposing rights."

If the source patient agrees to testing, "ascertain whether the exposed health care worker is willing to be tested for antibody to hepatitis B virus, hepatitis C virus and human immunodeficiency virus. If the exposed health care worker is not willing to be tested, do not test the patient (when the exposed person is not tested, there is no value in testing the patient source)."

Under the protocol, without the baseline testing of the health care worker, any subsequent claim for compensation from the Workplace Safety and Insurance Board may be denied.

The current protocol has worked well in health care settings, an environment which is at higher risk for the acquisition of blood-borne pathogens. While there have been documented cases of disease transmission in health care settings, health care worker to patient in Ontario and Canada, it is important to note that at this time there have been no documented reports of emergency service workers acquiring blood-borne pathogens occupationally in Ontario or Canada.

Moving along to the second protocol that I referred to in my introduction, the mandatory guideline and protocol for the notification of emergency services workers, I now turn to consider an overview of the existing guideline and protocol for emergency service workers in Ontario. In my respectful view, the protocol serves as a viable alternative to Bill 105.

First, some background. In 1994, to address the safety concerns of firemen, police officers and ambulance attendants, the public health branch of the Ministry of Health and Long-Term Care introduced a mandatory guideline and protocol for the notification of emergency services workers. This guideline and protocol was developed and approved by a multifaceted joint committee representing fire chiefs, firefighters, police, OPSEU representing ambulance personnel, the offices of the fire marshal, Solicitor General and emergency services, senior public health officials and a member of the Ontario Hospital Association.

#### 1620

The purpose of this protocol ie, the protocol for notification of emergency services workers, is to ensure that emergency services workers are notified of specific disease exposures so that appropriate action may be taken. The protocol specifically names the following blood-borne diseases: HIV/AIDS, hepatitis B, and diseases spread by the respiratory route, such as meningococcal disease and infectious tuberculosis.

Under the protocol, each emergency service organization must appoint a designated officer. Wherever possible this should be done in consultation with the joint occupational health and safety committee. Emergency service workers who believe they may have been exposed to one of the specified diseases are to report the exposure to their designated officer. The designated officer makes a determination of whether an exposure seemed possible during that incident.

A manual entitled Preventing and Assessing Occupational Exposures to Selected Communicable Diseases was developed to assist designated officers in such situations. If the designated officer believes an exposure may have occurred, he or she contacts the local medical officer of health, supplying all the details of the incident. The medical officer of health, as soon as practicable but not later than two working days, will inform the designated officer of any specific action to be taken.



This protocol also applies to good Samaritans and off-duty emergency service workers.

The protocols and the manual for the designated officers were distributed to all 37 health units in the province by the ministry's public health branch. In addition, the emergency health services branch of the Ministry of Health distributed the documents to the 195 ambulance services, the 876 fire departments, the 116 municipal police forces and to all districts of the Ontario Provincial Police force. A video has also been developed and distributed by the emergency health services branch to help educate designated officers.

If it is felt by the emergency service organization that the above protocol is not working as intended, it may be appropriate to investigate any complaints and respond appropriately. The emergency health services branch has provided the secretariat for fielding such complaints in the past.

I would like to stress that it is important to note that we have no reports of occupationally related disease transmission in Ontario or Canada of emergency services workers.

I turn my attention to Bill 105 and the Health Protection and Promotion Act. In this discussion I would like to compare and contrast certain provisions of Ontario's existing public health legislation, the Health Protection and Promotion Act, to Bill 105. I need to stress again that I fully support what I believe to be the spirit of Bill 105 and its objective. The question we all need to ask as we carefully review the bill as to whether this particular amendment will in fact achieve its aim is, will Bill 105 protect or enhance the health of emergency services workers and others it is designed to protect?

The purpose of Bill 105 and the Health Protection and Promotion Act: turning first to consideration of the purpose of Bill 105 and the Health Protection and Promotion Act, the Health Protection and Promotion Act currently provides for a comprehensive legislative scheme for public health concerns across the province. The Health Protection and Promotion Act provides medical officers of health with significant powers to protect public health.

The purpose of this act includes the prevention of the spread of disease and the promotion and protection of the health of Ontarians. Let me repeat that: the purpose of the Health Protection and Promotion Act is to prevent the spread of disease and to promote and protect the health of the people of Ontario. In contrast, Bill 105 makes clear that its purpose is to protect the interests of a single applicant in what may be viewed as an occupational setting. This is where the divergence of principles underlying Bill 105 and the current public health legislative scheme begins. This significant change underlies much of what is wrong with Bill 105 from a public health perspective.

The role of the medical officer of health under Bill 105 and the Health Protection and Promotion Act: a reasonable question to consider at this juncture is how this shift in purpose, from protection of the public health generally to protection of the interests of a specific

applicant, will affect the role of medical officers of health. Under the Health Protection and Promotion Act, the medical officer of health is a key statutory official whose role includes overseeing the delivery of public health programs and services in the health unit, the prevention of the spread of disease and the protection and promotion of public health. Under Bill 105, the medical officer of health will act as a jurist, as a kind of demi-judge, if you will, deciding whether or not to order the compulsory taking of a blood sample in a kind of dispute between two parties. It is possible that the bill's requirements will result in an adversarial environment between the parties. It is true to say that when orders are made by a medical officer of health or a court pursuant to the Health Protection and Promotion Act, the civil liberties of the subject of the order are clearly at issue. When the legal test under the existing Health Protection and Promotion Act is met, a blood sample may be ordered taken by a local medical officer of health.

It is my submission that the purpose of the Health Protection and Promotion Act, which includes the protection of the public health and the procedural protections under that existing scheme, justifies the intrusion on the rights and the civil liberties of the subject of the order. I am uncertain as to whether the purpose of Bill 105 justifies the intrusion on the rights of the subject of an order under the bill. I say this bearing in mind the risk assessment and statistics respecting reports of disease transmission involving these applicants and other less intrusive but more effective means available to achieve the goal of protecting the applicant's health.

Practically speaking, given the numbers of medical officers of health and associate medical officers of health across the province, it is surprising that few communicable disease orders are made by medical officers of health each year under the Health Protection and Promotion Act. One of the reasons may be that as a matter of sound public health practice, first response measures to a communicable disease problem generally include voluntary public health measures such as counselling, education, follow-up, offers of testing and referrals for appropriate treatment or community-based support. These are some of the tools medical officers of health may rely upon before making an order under the Health Protection and Promotion Act to protect the public health.

In sharp contrast, Bill 105 suggests that the appropriate first response to a possible incident of disease exposure is an application for an order to a medical officer of health, who will sit as a kind of judge between two parties, with the interests of the applicant being paramount. In my view, this may not be an appropriate role for a medical officer of health and will limit their ability to deal in more effective ways with a public health concern relating to a possible incident of disease exposure.

Mr Chair, you and the committee heard earlier about existing protocols, developed by experts in the field and indicated for possible disease exposure. Bill 105's



approach is generally not an appropriate or effective first response tool from a public health perspective, nor is the shift in the role of the medical officer of health.

Orders under Bill 105 and the Health Protection and Promotion Act: as you may know, the Health Protection and Promotion Act deals with risk to the public health. At present, section 22 of the act gives the power to a medical officer of health, where the legal test is met, to make an order requiring a person to submit to an examination by a physician to determine whether the person is infected with a communicable disease. Where appropriate, this examination may involve the requirement to provide a blood sample. In such cases, the Health Protection and Promotion Act says that the provisions of Ontario's Health Care Consent Act, 1996, do not apply. I note that there is no reference to Ontario's health care consent legislation in Bill 105 relating to the compulsory taking of a blood sample, which may be problematic.

How does the bill attempt to deal with the protection of the interests of a single applicant? In brief, the bill provides a statutory right to certain applicants—a victim of crime, persons providing emergency first aid and others set out under regulation—to apply to a medical officer of health for an order. The order compels the subject of the order to provide a blood sample and its analysis results will be provided to the applicant. I am oversimplifying the test and some aspects of the bill, but that is it in a nutshell.

It is important to note that the Health Protection and Promotion Act provides for a comprehensive procedural code and grants substantive and procedural rights to a person who is the subject of an order. These protections are important, because, as I have said before, a person's civil liberties are at issue.

These important protections will also apply to persons who are subjects of orders under Bill 105. However, they may tend to delay even further the only information that Bill 105 is trying so hard to provide to the applicant, ie, the results of the subject's blood test.

1630

Under the provisions of section 44 of the Health Protection and Promotion Act, an order by a medical officer of health must inform the subject that they are entitled to a hearing by the Health Services Appeal and Review Board within 15 days after a copy of the order is served on the person. The subject of an order may also apply for a stay of the order until the proceedings before the board are heard and dealt with. This means that a subject who has been ordered to provide a blood sample may ask the board for a hearing and may also ask for a stay of the order, which may significantly delay the process Bill 105 contemplates.

Given these procedural issues, I respectfully request the committee to again consider the question I posed earlier: will Bill 105 in fact protect or enhance the health of emergency services workers and others? Or does a more effective, timely and less intrusive means to this end already exist? In my respectful view, such a scheme already exists.

A few comments on the test under Bill 105 and clause 22.1(1)(d): under the test under Bill 105, one of the issues a medical officer of health must consider is their opinion, on reasonable grounds, that taking a blood sample from a person will not endanger their life or health. This is set out in clause 22.1(1)(d) of the bill. From a public health perspective, this is problematic. Under the bill, the medical officer of health is not provided with access to any health information about the subject of the order, nor is access provided to the subject's physician.

The key question to be posed here is, how then will the medical officer of health make a determination about the health of the subject and any health risk in taking a blood sample without access to their personal health information? In addition, there is no access under the bill to the health information of the applicant. As a practical matter, knowledge of the health issues of the person who may have been exposed to infectious diseases is critical in assessing their risk. From a public health perspective, this particular situation poses a problem.

If an order is made under Bill 105 and if the subject submits to having a blood sample taken, "reasonable attempts" must be made to deliver the blood analysis results to the subject and the applicant. Section 22(5) of the bill requires the medical officer of health to provide the applicant's address to the lab analyst. However, the bill is silent as to how critical personal information about the subject—his or her name, address and so on—is to be accessed. Without this information volunteered by the subject or provided by the applicant for the order, the medical officer of health will be unable to do what they are asked to do, ie, order that results be available to the applicant. This also may pose a problem.

In addition, the bill makes no provision for the baseline testing of the applicant, as outlined under the Ontario Medical Association/Ontario Hospital Association protocol that has been part of our health care workers' guidelines in hospitals for over a decade now. The OMA-OHA protocol, dealing with workers where there is demonstrable risk of disease transmission, where there is evidence of reported cases, includes baseline testing of the health care worker as part of the protocol. One considers this to be very important, yet I note there is no requirement or recommendation for baseline testing of an applicant within Bill 105.

To sum up on this point, without baseline testing of both parties, inappropriate medical action may be taken that may be detrimental to the applicant if a full medical history of both parties is not provided. As we have noted, no access to the medical histories of the parties is available under the bill.

Comments now focusing on the subject of the order or the person at risk: the thrust of Bill 105 is to focus upon the subject of an order—making an order compelling the taking of a blood sample respecting a subject, analysis of the subject's blood sample, provision of the information about the results of the analysis to the applicant and the subject of the order.



You heard me refer to existing protocols. We know there is not a simple solution to these difficult cases. But under these protocols, in an emergency situation where a possibility exists of infectious disease exposures, from a public health perspective the focus should appropriately be on the person who may be at risk.

Protecting our emergency service workers in situations where there may have been an occupational exposure means focusing fully on assessing the situation of the person who may be at risk and offering counselling, baseline testing and prophylaxis where appropriate. From a public health perspective, I am not convinced that Bill 105, with its focus on the subject instead of the at-risk person, assists the emergency services worker in the objective of reducing or preventing the spread of disease.

Some comments on Bill 105, the HPPA and confidentiality: I am concerned about issues involving confidentiality under Bill 105. Currently, under the Health Protection and Promotion Act, no person may disclose to any other person any information that is likely to identify someone who has been reported as having a reportable or communicable disease. These strict legal rules work hand in hand with good public health practice rules.

Sound public health practices require strict confidentiality respecting personal identifying information of an index case, ie, the initial disease case, who has been reported as having a communicable disease. For example, public health officials will never confirm or deny the identity of a partner to a person who may have been exposed to a disease by the partner, as, for example, sexually transmitted diseases. Bill 105, in pitting the applicant against the potential subject of an order, turns these long-standing confidentiality rules on their head.

Another serious privacy issue concerns the applicant's access to the subject's personal health information that the applicant is entitled to receive. If Bill 105 is proclaimed, the applicant should be required to maintain strict confidentiality respecting this information and to undertake not to disclose or use it for any purpose other than the purpose related to the order. The committee may wish to consider offence provisions for violations of this requirement.

Finally, the provisions shielding the subject's health information from use in proceedings under section 22.1(10) of the bill are too narrow. The provision shields the health information only from criminal proceedings. Disclosure in any proceeding might raise serious problems for the subject of the order. Once disclosed, the subject's personal information may be beyond their control. If Bill 105 is proclaimed in law, the disclosure should be prohibited in any proceeding except for a purpose related to the public health proceedings.

In conclusion, let me say that we in public health understand the very difficult circumstances that emergency services workers, good Samaritans and others sometimes face. We are all grateful for their commitment and dedication to public safety. However, it is important to note that within the existing public health legislative framework, medical officers of health already have the

power to make an order, where the legal test is met, to require a person to submit to examination to determine whether they are infected with a specified disease, in the interests of protecting public health. As we have heard, the purpose of Bill 105, in contrast, is to protect the interests of a single applicant. This pits an applicant against the possible subject of an order and places the medical officer of health in the uncomfortable new role of judge. This fundamentally shifts the role of the medical officer of health.

Under the bill, a person will be forced to provide a blood sample for analysis. This may be seen as a significant violation of personal privacy and bodily integrity and focuses attention on the disease status of a contact, resulting in information of possibly little or no value, rather than focusing on fully assessing the situation of the person who may be at risk.

Finally, and very importantly, the legal and ethical rules of sound public health practice respecting confidentiality and privacy issues involving patients are ignored under this bill. The better option is to reconsider the existing protocols for emergency services workers and to deal with incidents of possible disease exposure within the existing public health framework.

Mr Chair and members of the committee, I thank you for the opportunity to address you on these important issues.

**The Chair:** I wonder if any of the parties have comments or questions. I'll begin with the Liberal Party.

1640

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** I do have some questions. I appreciate the time you've spent in responding to this, Dr D'Cunha, although I guess I'm hoping—and Mr Dunlop can respond to this, perhaps, when the time comes around—that the Minister of Health or the ministry would have had some discussions with Mr Dunlop, as the presenter of the bill, at an earlier stage than this. I suspect that this presentation put you in a somewhat awkward position today to respond, unless you had some prior indication that there were these concerns.

I want to specifically ask—you mentioned the legal test that has to be met in order for a medical officer of health to make an order requiring a person to submit to an examination. Can you, fairly briefly, tell me what that legal test would be?

**Dr D'Cunha:** It is essentially where a medical officer of health has reasonable and probable grounds to believe that a person may be infected with an agent of communicable disease. The medical officer of health applies his or her mind to the circumstances surrounding the case of the person who may be infected. If the test is met and determines that there is a risk to public health, then consideration may be given to the public health, including starting off with counselling, amidst other things. Very rarely does one reach the stage of actually writing a section 22, because the initial workup generally seems to address most of it.

With the permission of the honourable member and committee, I'd like to quote the relevant part of the



statute for your benefit, if I may. This is section 22(2) under the act as it currently stands:

"A medical officer of health may make an order under this section where he or she is of the opinion, upon reasonable and probable grounds,

"(a) that a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease in the health unit served by the medical officer of health;

"(b) that the communicable disease presents a risk to the health of persons in the health unit served by the medical officer of health; and

"(c) that the requirements specified in the order are necessary in order to decrease or eliminate the risk to health presented by the communicable disease."

The key word here is "necessary." If some other means have been put in place that achieve the desired end of protecting the public health, then the legal test may not be met and there's no need to issue a section 22.

**Mrs McLeod:** I appreciate that. I think there are some specific concerns that need to be addressed through the regulatory process, and maybe we can have some discussion of that as we go through clause-by-clause.

My understanding of what you've presented us with today—and let me set aside the confidentiality issues for a moment, because I do think confidentiality issues need to be addressed, whether in the bill through amendment or by regulation. But I think the balance of what you have presented, as I understand it, is that what exists now applies to a broad group of people and therefore is manageable and constitutional, but because Bill 105 applies to specific groups of people or an individual applicant, somehow we're concerned about it. Given the added degree of risk and concern that emergency workers have professionally, I'm having trouble with the distinction. It seems to me that if what currently exists is not being really violated in principle by Bill 105, that the protocols are being incorporated in a way that's still consistent with the HPPA—I didn't know about the protocols. I don't know how many emergency workers on the front lines know the protocol exists. What Bill 105 does is it essentially takes that, puts it into law and says, "Here it is. Be comforted."

I'm a little discomfited by the sheer amount of time that any of this is going to take. There are certainly groups that have expressed real concerns about the bill, one of them being the Canadian HIV/AIDS Legal Network, and let me recognize the legitimacy of their concerns. But in one of the background papers they presented us with, it stresses the fact that treatment has to begin ideally within one to two hours. What you're telling me is that Bill 105 doesn't address that, but neither does the existing protocol or the HPPA. The emphasis on education and broader public health prevention measures I think is all fine, but the issue we're trying to deal with in 105 is the immediacy of a situation where treatment would have to begin ideally within one to two hours. I recognize how difficult it is to manage,

but it seems to me that what the bill's trying to do is at least give people a chance.

**Dr D'Cunha:** Essentially, as I stated earlier, the bill focuses on the occupational health of that individual emergency services worker or good Samaritan or member of the public at large who's in that situation to go and seek a blood test, which is the wrong way of addressing their concern. What the protocol in force right now requires is an assessment of the exposure and an element of clinical judgment brought to bear on that set of circumstances. If the exposure is significant and meaningful and if the situation is a high-risk situation for such an exposure, then the clinical decision is to start prophylaxis whilst awaiting test results. You address issues of confidentiality by taking appropriate consent, because there are significant issues in someone's HIV status, for example, being made known to all and sundry. One has to be extremely cautious given that we know how people suffering with HIV are discriminated against. That's one perspective.

It appears to me that what I'm really hearing and what I'm taking in right now is that there is a perception that from an occupational health standpoint, the concerns of our emergency services workers are not being addressed in a manner that satisfies them. It seems to me that Bill 105 is not the way to go there. The way to go there is to address that side of the equation.

**Mr Michael Bryant (St Paul's):** Two issues. First, with respect to the legal arguments you're putting forward—and you'll forgive me as a rookie MPP, if my civics aren't as good as they should be. You're an officer of the Legislature; you report to the Legislature, not the ministry?

**Dr D'Cunha:** I don't. I report to the Deputy Minister of Health as chief medical officer of health.

**Mr Bryant:** Good. In which case, your legal opinions, while obviously very important, really are speaking to matters that I think the Ministry of the Attorney General should be providing an opinion upon. While obviously your legal opinions, as I say, are very valid and relevant, it's really the government which has to take a position as to the legality of this.

This is my concern, that a number of your arguments bootstrap the legal arguments. The concerns about civil liberties, about privacy and so on are important issues that have to be addressed, but I think they can be separated out from the medical issues, and I'd like to hear from the Ministry of the Attorney General or the parliamentary assistant the position of the government on that. Once you remove those legal concerns, then it comes down to one where you're saying—I'm probably totally dumbing down your argument and I regret that, but time is short—that you're uncomfortable playing this new role of what you put as "judge." Well, you have to exercise discretion under the current powers. This is an exercise in discretion. They're not asking you to play an adjudicative role. The Legislature is saying, "We would like the medical officer of health to have the discretion to use this new power." That isn't playing judge; that's exercising



the same discretion you exercise when you make a determination that there are reasonable and probable grounds.

In that sense, I'm just wondering to what extent are your arguments, your legal arguments and your discretionary arguments—are they bolstered by or have they not yet been visited upon by the Ministry of the Attorney General?

**Dr D'Cunha:** I can respond to the area of medical expertise, because you clearly would also like to hear from the Ministry of the Attorney General and I won't attempt to practise law. Simply put, it puzzles me medically and from a public health standpoint how the taking of a blood sample, with results maybe a couple of hours in the coming depending on where the exposure happened and getting that blood sample to the appropriate lab for testing, would affect the appropriate clinical decision to be made then and there.

There is also the concept of a window period to be factored in, where an individual who's infected and capable of transmitting disease—and some of these have long incubation periods, where someone will test negative but actually be capable of transmitting the disease. Therefore, a negative test result is not significantly going to change the initial clinical management. The only value of doing the blood test, if you will, is getting a positive back to say so-and-so was such-and-such. Clinically, you make some clinical decisions on the spot before you even get to that stage. That's the real clinical significance.

And to assist that, you need baseline testing of the emergency services worker too. Let me give you a situation, for instance. If an emergency services worker is already HIV-positive, why would you want to offer that individual appropriate post-exposure prophylaxis? If the individual is—and this is where one needs to take a history—already appropriately immunized against hepatitis B, which has been offered to all emergency services workers in the province on a voluntary basis, and if one knows the results by titre, in the preceding two years of a protective titre, there's no further action. If the results are not known or not available in a timely fashion or if they're less than 10, then the person needs a booster, say, for hepatitis B.

**Mr Bryant:** I may have misunderstood, but isn't there a value in the person who may require treatment getting that information so they can then seek treatment?

1650

**Dr D'Cunha:** I don't believe the value is in the individual who is exposed. The value is probably in the personal care physician, the occupational health physician or whoever is providing health care to make the appropriate decisions. Respectfully, a layperson in possession of a test result is not likely to be able to interpret it in light of the circumstances, other than to say, "I was exposed to ABC and ABC tested positive for this disease." If anything, it has to be set up in a context, in an appropriate framework of counselling and an appropriate clinical plan of action, to deal with what one is dealing with.

**Mr Bryant:** But you said before, I thought, that time was of the essence. If time is of the essence, why not improve our regime so that we could respond quicker?

**Dr D'Cunha:** The blood testing is not an improvement of the regime, if you will. The blood testing is, in my view, a false sense of security, because you're relying purely on the blood test results, and it only has meaning if it's positive. If it's negative, unless you repeat that blood test over subsequent periods of time to determine whether that individual was in the window period or not clinically, even without blood test results, health care providers out there would do what is appropriate where the exposure was significant. When you step right back to the incident, it's an assessment of the exposure.

I'll use some simple examples to make the point. Did somebody get stuck with a needle on-site? Did somebody just see blood getting splashed with nothing coming on the individual? Did someone's clothes just get wet? Was that someone donning appropriate protective equipment? That is why one of the things we recommend to all people is that when you're in a situation where you're providing first aid, generally follow the principles of universal precautions. From a prevention standpoint, which is what I believe in, I invest in universal precautions. This is kind of coming after the fact.

**Mr Peter Kormos (Niagara Centre):** I appreciate very much your doing this report. Is this the first time you've ever been consulted about the bill?

**Dr D'Cunha:** That's correct.

**Mr Kormos:** We are under time constraints. However, I ask committee members to consider that if the Chair's attention is not drawn to the clock, the committee has the capacity to go beyond 6 of the clock.

Very quickly, I'm trying to think of a scenario where—because I hear you about the protocol and I hear you about the fact that I can test negative for AIDS today yet a week from now test positive for AIDS. That's one of the things you've mentioned in terms of delayed response. I understand that. I presume that any emergency medical officer, any firefighter, any police officer, any good Samaritan who's getting medical advice is going to be cautioned in that regard, that the blood you get from me today may prove negative, but that doesn't mean for sure. But if it proves positive it's a pretty good indication, right?

I'm talking about a case where I'm in my basement and I'm on my table saw or my radial arm saw and I take however many digits off—more likely on the radial arm saw; they're far more dangerous than the table saw. But either my neighbour or a firefighter or whoever comes to my aid—there's blood all over the place. Wouldn't this bill at the very least give them access to the blood testing that would be done upon my arrival at the hospital? Do you know what I'm saying? My presumption is that if I'm at the hospital in an emergency room, even that firefighter, police officer or neighbour—you talk about using protocols. My neighbour is not a trained emergency medical person, but I hope my neighbour would dive in there, with bare hands if need be, to do what they had to



do. But wouldn't this bill give my neighbour access, for instance, to the blood testing done immediately when I arrived at the hospital—this bill—in terms of the medical officer of health determining, "Yes, neighbour, good Samaritan, you're entitled to a sample of his blood."

I understand what you're saying about the protocol. I understand what you're saying about the public health issue, which is different, because public health is different from private health issues, very clearly. But if this exists either to put people at ease or to permit them—it may not be every case where it permits the rapid response that was spoken of, within two hours for some exposures, that you need to blast it with whatever chemicals or medical response within two hours, but it may accommodate some. That's what I'm putting to you: does it have that capacity?

**Dr D'Cunha:** I would put to you that under the existing protocol, if somebody was significantly exposed—and the existing protocol does cover good Samaritans—a determination would be made by the health care provider and public health whether there was or was not a significant exposure. If there was a significant exposure, the appropriate intervention would be considered, for example, in the case of hepatitis B, the provision of the appropriate immunoglobulin and hepatitis B immunization if the exposed person was not immunized, and in the case of HIV/AIDS that would happen.

While all of this is going on on this front, the health care provider providing care to the subject, if you will, would take somebody through a whole discussion on informed consent. In particular, the standard of medical practice in Canada today, as advocated by the Canadian Medical Association and that I hope all my medical colleagues are following, is that before you test somebody for HIV/AIDS you take them through an informed consent process. Generally, when you sit down in a reasonable manner and discuss with an individual who is able to give consent—because in certain situations, if they've lost a lot of blood, they may be unconscious—in fact consent is readily given. So that happens. This is, in my view, an unnecessary intrusion, because I have not seen evidence of this failing. This is a false sense of security, if you will.

**Mr Kormos:** You say there have been no cases. I can vouch for one case of a police officer in my community, with whom my office worked closely, who, if I recall accurately, was bitten—it was a real bite—and did contract one of the hepatitises—I don't have the details—as a result of that. It was only when that police officer was tested that it was revealed; it wasn't as a result of the biter, the person committing the assault, being tested. There's one case. I don't know personally of any others, but I'm saying that I know of one case. My office worked with this regrettably young police officer. I don't know if this bill would have necessarily facilitated speedier treatment. I don't know. But this bill doesn't detract from the existing protocol, does it?

**Dr D'Cunha:** It does not detract from the existing protocol. If anything, it requires an intrusive invasion

into somebody's body—and I'm going to stay away from the legal jargon—by sticking a needle in, when in fact you go through the other process and still get to where you want to go.

In terms of the unfortunate police officer who may have contracted one of the hepatitises through this occupational exposure, I am extremely concerned, if there's truth to that story, as to why the system didn't hear about it. This is the kind of thing that—

**Mr Kormos:** That's interesting, because we were dealing with, effectively, workers' comp. We were dealing within the system. I'm telling you the straight goods, and I'm not going to say anything more about it, but we were dealing with all the provincial authorities. I'm not stringing you a line. I'm giving you the straight goods on that one.

I'm going to yield the floor, because we've got to speed up.

**Mr Garfield Dunlop (Simcoe North):** Doctor, thank you very much for coming this evening. I just want to clarify a couple of things, first of all the timing. It's unfortunate that you hadn't heard about this bill before. We had discussions prior to even September 11, so I don't want to hang anything on September 11, feeling sorry for police officers or firemen or anything like that, because we had quite a bit of consultation on this particular bill during the summer months. At that point we were dealing with medical records but changed the bill to blood sampling. We've notified a number of ministries, including the Ministry of Health and the Ministry of the Attorney General. I have an opinion from the Ministry of the Attorney General as well. By the way, I'm the one who drafted the bill. Business services, correctional services, the Solicitor General—all these ministries had an opportunity to see this bill.

Many of the people we visited with have your bill from 1994, an information manual for officers. However, I've got to tell you, if you think this is working, it's not, because the people who presented me with copies of these said it's not good enough. There are too many officers, too many firemen—and I can tell you some of the people we talked to: paramedics, for example. I had one paramedic who had been openly cut 35 times in his 15-year career, providing a service to the public. We talked to police officers—one police organization, the Police Association of Ontario, represents around 14,000 police officers—firefighters from across our province, correctional workers, victims of crime and just good Samaritans, and even, recently, ski patrol workers, the Canadian Ski Association, the people who provide first aid on the hills. They are very, very concerned about what's taking place, the kinds of diseases they can come across.

1700

We felt that this bill promoted protection and worked with public health. We believe it helps prevent the spread of disease when you can take a blood sample and find out what person may or may not have a communicable dis-



ease and treat them for that. So we think that at times it actually prevents the spread of disease.

I take it that you're not in favour of the legislation before you. I assume you have no amendment to it either. Today, we've only had one amendment come in, and that was from the Office for Victims of Crime.

I wanted to make those comments to you. We did have a response back from the House here. We have met at times with the privacy commissioner, and there's no response today from her. We've got that in writing, that she's not responding to this bill at this time. We felt that the bill, even in its current form—the three parties in the Legislature support the bill. We felt it was certainly a step in the right direction.

The problem we have right now, as we sit here today, is that we have clause-by-clause to complete today. We have no amendments, so we have to either go back to the House and ask for more time—but under the order we're working with today, we have to finish clause-by-clause and then report to the House, and then that report may have to go back to another set of hearings or more amendments, whatever it may be. I wanted you to know that part today. I really do apologize that you haven't seen this up until this point, because it certainly has been circulated to your ministry.

**Dr D'Cunha:** With your permission, two points. It's fair for me to state, and legal counsel advised me, that an earlier version of your bill did come to the ministry, and similar flags were raised then. I noted from your comments that I didn't hear a single public health association named. In discussion last night with the medical officers of health, who fortuitously—some of them are in the audience—happened to be in town for two days for a meeting, none of them were consulted, and they're all unanimous about this. I'm astounded and amazed, respectfully, that a bill is being put under the HPPA and public health groups were not touched base with. I'm still kind of reeling from that observation on your part. I respectfully put that in front of you.

**Ms Marilyn Mushinski (Scarborough Centre):** Like Mrs McLeod, Dr D'Cunha, I was not aware of all the protocols that existed within the Health Protection and Promotion Act, and like my colleague Mr Dunlop, I'm not entirely convinced they're 100% effective. I'd like to tell you why. This is particularly topical for a constituent of mine who was in my office just a couple of weeks ago, who has not received any satisfaction from either his employer or his union with respect to an incident at work. He was bitten by a robber. While it is not appropriate, obviously, for me to go into all the details with respect to this individual, the system did break down in that he was a victim of crime but the accused criminal was let go by the police before there was any opportunity for any protocols to be put in place. I'm not even sure at this point that either employers, unions or the police were aware of these particular protocols.

Can you tell me how Bill 105 would detract from those protocols, given that we are specifically talking

about a group of individuals here who become victims of crime?

If I may, just to carry on a little bit, this particular constituent of mine, who was bitten about five years ago, is more afraid of having contracted a disease that is not immediately identifiable. The impact this has had on his family—his relations with his wife have moved to the point where he no longer has any relations with his wife. So there are implications of a number of criminal activities, if these protocols are not put in place, that have a serious impact on the lives of innocent victims of crime.

I'd like you to respond to how you feel Bill 105 would detract from that.

**Dr D'Cunha:** I'm going to answer your question in a slightly different manner. The stated intent, save for the good Samaritan and the victims of crime, is predominantly an occupational health and safety issue. With reference to the specific issue you raised as it pertains to a constituent of yours, any member of the public should have contacted the local health department to discuss the potential exposure, get appropriate counselling and advice. If the individual did not contact the local health department or the local office in the new amalgamated Toronto, that is some cause for concern, because that is what public health is all about: to discuss potential exposures and get the appropriate response.

I'd like to stress again that this is predominantly an occupational health and safety issue, save for the good Samaritan or victims of crime piece, and this is the wrong statute you're seeking to amend if that is indeed the desire of the House.

**Ms Mushinski:** But if we're talking about protocols in terms of protecting everyone here, is there not some need for us to ensure, even under the Occupational Health and Safety Act, that those protocols apply to employees within a work environment? The criminal activity—this particular employee, finding a robber in the process of robbing an establishment, was bitten by that robber. There are two things that come into play here. All I'm saying is that I don't see how Bill 105 actually detracts from protecting victims of crime, whether they're in the workplace or outside of the workplace. The purpose here is to protect victims of crime, emergency services workers, who are also in the workplace, good Samaritans and other persons. So it really isn't one individual but a whole range of individuals who are victims of crime, or could be.

**Dr D'Cunha:** I would contend that the province has 17 mandatory public health programs that all 37 health units in the province are obliged to deliver. Within those 17, there is one program called control of infectious diseases, in which state-of-the-art science protocols have to be followed by the 37 health units on the ground. I'm proud to tell you they actually do that.

From what I am hearing, members of the committee, of the individual anecdotes you're tabling, if it appears there's a lack of knowledge, I don't see how a statute amendment is going to address that. You're still going to have to deal with the lack of knowledge. I contend to you



all, respectfully, that the means already exist through the control of infectious diseases program for anybody, regardless of whether it's a non-workplace setting or a workplace setting, to seek help. If it's a workplace setting, one potential route is the Occupational Health and Safety Act. Another potential route is the local public health department, which, where appropriate, will refer it to the Ministry of Labour. The statute in fact makes that clear, that where appropriate, the local medical officer of health will refer a matter to the ministry of the government of Ontario that has the primary role in the particular situation. In the case of the good Samaritan or the victim of crime, those persons wouldn't be picked up under occupational health and they would then stay predominantly in the public health realm.

That having been said, regularly there have been biting incidents in schools that public health has been actively involved in. I remember that during the two-week period in which I was serving out notice to come to my position, there was a situation in public health that was being dealt with in an unnamed health department involving a known HIV-positive child having bitten somebody. The situation was handled with dignity, appropriately, without invasive tests being carried out on the subject, on the applicant, to the satisfactory resolution of all concerned.

1710

**Ms Mushinski:** I'm not arguing the effectiveness of the protocol. My concern is, what happens when that breaks down? We can use anecdotal examples because that's what we're here for, just to really protect the interests of our constituents who have been impacted by a protocol that broke down. Whether it was in the workplace or outside of the workplace, I believe we should be doing things to strengthen protocols that actually help protect all victims of crime. If that means extending your protocols into the workplace, and Bill 105 attempts to achieve that to some degree, then I think that's a good thing rather than a bad thing.

**Dr D'Cunha:** And I would contend that because the control of infectious diseases standards have the force of law, because they've been signed by the Minister of Health, you already have that statute re protection built in. If it's the wish of the House to enact five pieces of legislation to say the same thing, that's the desire of the House.

**Ms Mushinski:** God forbid, but thank you for your comments anyway.

**The Chair:** Ms McLeod, a brief comment?

**Mrs McLeod:** More a suggestion in terms of moving on with the task before the committee, Mr Chair. Obviously, I think it's fair to say that the government didn't perhaps take private members' bills seriously enough to have put in place the standard check-and-balance system that a government bill would go through. The government is perhaps a little bit caught here at not having responded in due time, even though this particular piece of private member's legislation was put forward by one its own members.

I was one who suggested that Dr D'Cunha be present here because we were hearing concerns from medical officers of health. I guess my hope was that there might be some recommendation for specific amendments that could be quickly incorporated, and that's not the case. In the meantime, we have a bill before us that has received unanimous support in the Legislature, if I am correct, and we have a time allocation motion that takes it back to the House immediately.

My suggestion is that in the absence of specific amendments, as Mr Dunlop has noted, apart from the one from the Office for Victims of Crime, there section 3 provides a new section 97 in the HPPA. It is "The minister may make regulations," and section (c) of that is "governing an application for an order made under subsection 22.1(1)." That seems to me to be a very broad regulatory-making ability. I would normally be apoplectic about such broad regulatory-making ability being given to any minister, but in this case it seems to me that that may provide an opportunity for the Minister of Health to take what will be a bill that I believe will receive third reading and look at incorporation of the reconciliation with the protocols and some of the confidentiality issues in particular that need to be addressed for the minister to be comfortable with the bill and its consistency with the HPPA. If the committee feels that that regulatory ability is broad enough under that section, I would strongly recommend that those regulations be put in place before the bill is actually proclaimed.

**Mr Kormos:** I understand that there are two lawyers here from the Ministry of the Attorney General, one of whom is prepared to speak to this bill and its constitutionality. He has to leave, I'm told, at 5:30, so I'm hoping we can accommodate him.

**The Chair:** Do we have consent?

**Mr Kormos:** Who you gonna call at 3 am, huh? A lawyer.

**The Chair:** I see consent from this committee. Before we begin, I do wish to thank Dr D'Cunha and Ms Henderson for coming before the committee. Thank you very much.

#### MINISTRY OF THE ATTORNEY GENERAL

**The Chair:** Could we ask the people identified to come forward to the witness table? For the purposes of Hansard, could we ask for your names?

**Mr William Bromm:** I'm William Bromm, with the policy branch of the Ministry of the Attorney General. With me is Richard Stewart, and he's constitutional counsel with the Ministry of the Attorney General.

**The Chair:** Mr Kormos, did you have a question for the people at the witness table?

**Mr Kormos:** Yes. You're lawyers with the Ministry of the Attorney General, and you folks have reviewed this bill with a view to its constitutionality and its capacity to withstand constitutional tests, right?

**Mr Richard Stewart:** In a preliminary fashion, yes.

**Mr Kormos:** And have you examined the bill from the point of view of its application, in terms of its enforceability?

**Mr Bromm:** No, we didn't look at the interaction between the bill and the current provisions of the Health Protection and Promotion Act or how it would be enforced. We were asked on a very preliminary basis to look at the bill to see whether any constitutional issues came up and whether or not they were significant and what the risk was. But it was a preliminary review and it was quite limited in scope.

**Mr Kormos:** So you've got caveat after caveat here.

**Mr Bromm:** As most lawyers usually do, yes.

**Mr Kormos:** OK. Let's hear what you've got to say.

**Ms Mushinski:** Just one question.

**Mr Kormos:** I just asked a question.

**Ms Mushinski:** If a reg was developed to accomplish what it is that we want the bill to accomplish, you would, I take it, obviously be providing legal counsel in order to do that.

**Mr Bromm:** We could provide an opinion, and with our civil law division we could provide an opinion on the reg power. I would comment on a preliminary basis that I think the scope of the matters you wish to deal with through regulation probably isn't covered by the last clause, because it deals with the application procedure. One of the concerns that had been raised has to do with the confidentiality of information after the application has been processed and approved and what you can do with that information, so I think you would need to extend your regulation-making authority before you could deal with certain issues, but you could do it.

**Mrs McLeod:** That is when the confidentiality provisions become a concern, after the order has been made. It's a question of what binds the recipient of any information that comes from the testing. Are you saying that clause (c) does not provide the regulatory scope to make that clear?

**Mr Bromm:** Yes. If you look at the wording of that section, it says, "governing an application for an order," so the regulation power has to do with the procedure you follow when you make an application but it wouldn't extend to the authority to deal with information that results from an order to actually produce a sample. You would need a new regulation-making power to do that.

**Mrs McLeod:** You wouldn't be able to suggest one very quickly to us, would you?

**Mr Bromm:** If you want one, we could probably speak with legislative counsel about what it might look like to have as broad a scope as possible. But a lot of times there's hesitation to have a completely open regulation-making authority, so it would be better to know exactly what types of issues you would like to deal with in the regulation. I think legislative counsel would be more comfortable to know the parameters. All I know, hearing what I heard today and looking at that power, is that it's not broad enough to deal with all the issues you would like to deal with through regulation.

**Mr Kormos:** Let's get to where we started, which is your comments on the constitutionality, please.

**Mr Stewart:** In brief, any time you require a person to submit to the mandatory taking of blood it does raise significant privacy issues under section 7 and section 8 of the charter, unreasonable search and seizure and potential violations of the security of the person. After a preliminary review of the proposed amendments, it's our view that the provisions are structured in such a way as to avoid excessive arbitrariness. They're specifically restricted to where there is a determination on reasonable and probable grounds that the applicant does fit within the prescribed criteria, thus limiting the circumstances in which blood would be taken to cases in which there are exigent circumstances that would justify the intrusion.

**Mr Kormos:** That's what's important. I read this and I also look to the federal bill that's going to be before Parliament, and it parallels this one significantly. One of the things I want everybody to be clear on: as I read what gives the health officer jurisdiction, the applicant may have become infected with a virus. That goes to the nature of the contact with the fluids, doesn't it?

**Mr Stewart:** Yes, and that's something that the medical officer reviewing the particular application would have to make a request about, as to whether there is a reasonable risk that would justify the taking of blood in that circumstance. He or she is using their expertise to make an assessment that the risk is reasonable in that circumstance to justify.

**Mr Kormos:** Because it very clearly says "a virus." It doesn't focus on any single communicable or viral communicable disease, right?

**Mr Stewart:** Right.

**Mr Kormos:** OK.

**Mrs McLeod:** This is a lousy way to make legislation, by the way. Nevertheless, we're in this position. The amendment process should have been completed by Friday at noon.

Given what you've just told us about the confidentiality provisions not being able to be addressed, would something like this expand the scope of the minister's regulatory power? I can't believe I'm talking about expanding the minister's regulatory power, but what about a clause (d) to add "the minister may make regulations setting out privacy provisions that apply in circumstances in which an order is made under the amended HPPA"?

**Mr Bromm:** The more specific you can be with respect to the issue you want to deal with, obviously, that power would be better. But the Ministry of Health, in particular their privacy people, might want to have some time to think about what that power looks like and whether or not it's appropriate. The only comment I can make at this point is that the power that's currently there isn't broad enough to do what you want, and the committee needs to consider what it is they would like to do through regulation and then be as clear as possible. But I wouldn't want to comment on a health-related statute from the Attorney General's perspective, other



than to say those things, and then I would leave it to the Ministry of Health and legislative counsel to decide if that's an appropriate wording for the statute, given the other provisions of the health statutes. Sorry I'm not very helpful.

**Mrs McLeod:** No, no, that's all right. It's unfortunate the Ministry of Health missed the time frame in which to respond.

**The Chair:** If that concludes questions or comments for the gentlemen at the witness table, I'd like to thank—

**Mr Kormos:** Whoa. I have one more question. Your comments surprise me. I thought the Attorney General, as a lawyer, did all this drafting and legal crafting himself. You mean that's a myth?

**Mr Bromm:** Every now and then he lets someone else do a bill.

**Mr Kormos:** Thank God there are real lawyers like you at the Ministry of the Attorney General.

**Mr Dunlop:** Weren't you the AG for a while?

**Mr Kormos:** That would have been interesting.

**The Chair:** Excuse me, gentlemen, I have a further question or comment from legislative counsel.

**Mr Michael Wood:** I wanted to make one comment on this, perhaps also in response to a question that Mr Kormos just asked. In Bill 105, when it talks about, in section 97, a reg-making power, that is a power for the minister in the Health Protection and Promotion Act, which is the Minister of Health. So the regs would be drafted, in fact made, by the Ministry of Health.

**Mr Stewart:** Yes, and that's why I wouldn't want to comment from the Attorney General's perspective about what the power should look like, because it's a Minister of Health power and not an Attorney General power.

**Mr Wood:** Exactly.

**The Chair:** Thank you, Mr Stewart and Mr Bromm, for coming forward. This would now conclude the first agenda item. The next agenda item is clause-by-clause consideration of the bill.

**Mr Kormos:** Chair, I'm wondering if a three-minute recess might not be useful in organizing the balance of this committee.

**Mr Dunlop:** Would that be OK, Mr Chair? I'd like to do that as well, just a quick recess for a couple of minutes.

**The Chair:** We will return in five minutes.

*The committee recessed from 1724 to 1746.*

**The Chair:** Mr Kormos?

**Mr Kormos:** Chair, I just spoke with Mr Dunlop and Ms Ecker, and Mr Bryant was with us for most of that time, at least for the substantive part of the conversation. We have agreed, subject to people indicating so here—this is my understanding of the agreement—that because of the apparent need now for amendments that would be driven primarily, I presume, by the Ministry of Health, but it doesn't really matter who drives them in response to the concerns about the regulatory power, the bill needs some amendment satisfying those concerns. Unfortunately, the motion that was moved to get the bill here was so restrictive, unlike the one I prepared for Mr Dunlop,

that it requires us to put the question on the bill at the end of today's hearings and to refer the bill back. That's the motion that was agreed to.

It would have been my preference for the bill simply to have remained in committee and then adjourn this over to when the committee meets next. I've indicated to Ms Ecker that we will accommodate Mr Dunlop in terms of agreeing to a special one-hour sitting of the committee or what have you. So what we propose to do today because of the nature of the motion is vote on the bill clause by clause so the bill can be reported back to the House. There will then be unanimous consent given tomorrow to the bill being referred back to committee so that the amendments being proposed can be put. Again, there will have to be some co-operation about making sure that the committee assembles itself. If it requires unanimous consent to sit outside of normal committee times, we've indicated that could be done. We're eager to see the bill proceed and we want the bill, as we've indicated, and as I'm sure Mr Dunlop and everybody else does, to do what it purports to do in an appropriate way. That is my understanding, and Mr Dunlop can comment to that.

**Mrs McLeod:** First of all, a question, Mr Chair: explain to me how we proceed at the end of this day in terms of the resolution that says the question on the bill must be put in committee. We don't have a resolution from the House to change that at this point.

**Mr Dunlop:** We go through this bill today, so there are no amendments whatsoever to it, and report that to the House tomorrow.

**Mrs McLeod:** And we pass the bill unamended?

**Mr Dunlop:** We pass the bill unamended—

**Mrs McLeod:** Then how can it come back for future amendments?

**Mr Dunlop:** By unanimous consent in the House to go back for more amendments.

**Mrs McLeod:** All right.

**Mr Dunlop:** This is what Mr Prins mentioned to be me earlier in the day when I first saw the problems that had arisen from the MOH.

**Mrs McLeod:** Mr Chair, I guess we take on faith that the intent is still to pass the bill, even though I think there is some discomfort for the government in the presentation they heard this afternoon. It's the wish of members of this committee certainly and members of our caucus that this bill be passed. I trust it will be possible to bring this bill back to committee and deal with those proposed amendments before the conclusion of this House, which is potentially next Thursday.

**Mr Dunlop:** That's the intent right now, Mrs McLeod. The government House leader's office will work with Minister Ecker to draft that motion.

**Mrs McLeod:** I'm prepared to accept that, but I would like to place an amendment on the table. My concern with going through with it unamended is that I really do believe the confidentiality issue needs to be addressed. It makes me somewhat uncomfortable to pass the bill unamended in the expectation it's going to come back with amendments. I would have preferred at least to

have placed the amendment giving the minister the power to make regulations regarding confidentiality, which would address a key concern, prior to having a vote on the bill.

**Mr Kormos:** We can't prevent her from doing that. That's her right.

**The Chair:** And we'd we vote on it.

**Mr Bryant:** I also believe we ought to and I will put an amendment on the table, further to the submission from the Office for Victims of Crime, dealing with section 22.1(1). In other words, I don't want to just vote for a provision that I don't in fact support.

**Mr Dunlop:** All right. We'll do the two today. There's no problem with that.

**Mrs McLeod:** They can be changed if for some reason they don't seem to be adequate. We can have that discussion when it comes back.

**Mr Dunlop:** They can be changed, yes.

**Mr Kormos:** Furthermore, I would ask, and I've spoken with Mr Dunlop, that for 22.1(1)(a)(i) the government consider amendments to that portion where it says "as a result of suffering a physical injury while being the victim of a crime." That's what's dealt with in the amendment, to make (ii) the parallel of that.

*Interjection.*

**Mr Kormos:** Is this addressing (ii)? It currently reads "while providing emergency health care services or emergency first aid to the person, if the person is ill, injured or unconscious as a result of an accident or other emergency." I'm going to suggest that to make that the parallel of the amended (i), the amendment Mr Bryant is proposing, the government consider deleting the words reading "if the person is ill, injured or unconscious as a result of an accident or other emergency." That seems to me to be incredibly restrictive in the same way that suffering a physical injury while being the victim of crime was considered restrictive. Do you understand? It's my view that sections should parallel each other. Do you understand what I'm saying, Mr Dunlop, the deletion of the words "if the person is ill, injured or unconscious as a result of an accident or other emergency"? It seems to me that the paragraph should read, "while providing emergency health care services or emergency first aid to the person," end of paragraph.

**Ms Mushinski:** Are you talking about 22.1(1)?

**Mr Kormos:** Section 22.1(1)(a)(ii).

**The Chair:** Let's formalize the process and begin clause-by-clause consideration of the bill. You may recall the standard question, are there any comments, questions or amendments to any section of the bill, and if so, to which section? If the committee is amenable to this, we could begin with section 1.

**Mr Dunlop:** Go with section 1.

**Mr Bryant:** I move that subclause 22.1(1)(a)(i) of the Health Protection and Promotion Act, as set out in

section 1 of the bill, be struck out and the following substituted:

"(i) as a result of being the victim of a crime,"

**The Chair:** We have a Liberal motion to section 1. Shall this amendment carry? Carried. It's unanimous.

**Mrs McLeod:** Conscious of the fact that we have a vote, we can move really quickly here, folks.

**The Chair:** Next question: shall section 1—

**Mr Kormos:** As amended, carry?

**Interjections:** Carried.

**Mr Kormos:** Section 2, carried?

**Mrs McLeod:** Would you like to compress the next sections, Mr Chair, right up to section 3? Actually, section 2 is—

**Mr Kormos:** Shall section 1 carry? Carried. Section 2, carried?

**The Chair:** Yes, section 1 carried. Shall we collapse sections 2 through—

**Mrs McLeod:** It's just section 2.

**Mr Kormos:** It's just section 2. It's on page 3 of the bill.

**The Chair:** I'd better get order here.

Are there any amendments to section 2?

**Mr Kormos:** No, section 2 is carried.

**The Chair:** Shall section 2 carry? Carried. Section 3, any amendments?

**Mrs McLeod:** I move that section 97 of the Health Protection and Promotion Act, as set out in section 3 of the bill, be amended by adding the following clause, and this is under the heading "Minister may make regulations":

"(d) specifying restrictions or conditions on the use or disclosure that any person may make of the sample of blood described in clause 22.1(2)(b) and on the use or disclosure of any information derived from the sample of blood."

This is the suggested wording from leg counsel. It just allows the minister to make confidentiality provisions.

**The Chair:** Any further discussion? Shall I put the question?

**Mr Kormos:** Carried.

**The Chair:** Shall the Liberal amendment to section 3 carry? Carried. Shall section 3—

**Mr Kormos:** Shall the section, as amended, carry?

**The Chair:** I'll have to repeat it; people didn't hear me. Shall section 3, as amended, carry? Carried.

**Mr Kormos:** OK, doing 4 and 5 together, please.

**The Chair:** In keeping with protocol, we will collapse sections 4 and 5. Shall sections 4 and 5 carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 105, as amended, carry? Carried.

Here's the last question: shall I report the bill, as amended, to the House? Carried. You're sure you want me to do that after today?

Meeting adjourned.

*The committee adjourned at 1757.*



## CONTENTS

Tuesday 4 December 2001

<b>Health Protection and Promotion Amendment Act, 2001, Bill 105, Mr Dunlop /</b> <b>Loi de 2001 modifiant la Loi sur la protection et la promotion de la santé,</b> <b>projet de loi 105, M. Dunlop .....</b>	<b>J-679</b>
Ministry of Health and Long-term Care.....	J-679
Dr Colin D'Cunha chief medical officer of health	
Ministry of the Attorney General.....	J-688
Mr William Bromm, counsel, policy branch	
Mr Richard Stewart, counsel, constitutional law branch	

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### Chair / Président

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### Vice-Chair / Vice-Président

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### Substitutions / Membres remplaçants

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Ms Marilyn Mushinski (Scarborough Centre / -Centre PC)

#### Clerk / Greffier

Mr Tom Prins

#### Staff / Personnel

Mr Michael Wood, legislative counsel

A2 ON  
XC17  
-577



100-1000  
100-1000

J-31

J-31

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 10 December 2001

# Journal des débats (Hansard)

Lundi 10 décembre 2001

## Standing committee on justice and social policy

Rescuing Children from Sexual  
Exploitation Act, 2001

## Comité permanent de la justice et des affaires sociales

Loi de 2001  
sur la délivrance des enfants  
de l'exploitation sexuelle



Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Monday 10 December 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Lundi 10 décembre 2001

*The committee met at 1605 in room 151.*RESCUING CHILDREN FROM SEXUAL  
EXPLOITATION ACT, 2001

LOI DE 2001

SUR LA DÉLIVRANCE DES ENFANTS  
DE L'EXPLOITATION SEXUELLE

Consideration of Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act / Projet de loi 86, Loi visant à délivrer les enfants prisonniers de la prostitution et d'autres formes d'exploitation sexuelle et modifiant le Code de la route.

**The Chair (Mr Toby Barrett):** Good afternoon, everyone. Welcome to this regular meeting of the standing committee on justice and social policy for December 10, 2001. We are considering Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act. The agenda for today is clause-by-clause. I would begin by asking are there any comments, questions or amendments to any section of the bill and, if so, to which section? Does anyone wish to make any opening remarks?

**Mr David Tilson (Dufferin-Peel-Wellington-Grey):** For the record, I have asked William Bromm to join us at the table. He is with the Ministry of the Attorney General. Members of the committee, throughout our deliberations, may have questions of him. I presume that members have no problem with him sitting with us.

**Mr Peter Kormos (Niagara Centre):** People may recall that I was one—and not alone—of the people in the assembly who wanted hearings on this matter and have concerns about the bill. I am appreciative, therefore, of Ministry of the Attorney General lawyers being here. We've got two days for the hearings. I want to make it clear that I want some explanations of the impact of any number of sections and proposed amendments. In that respect, I'm grateful to Mr Bromm for being here.

**The Chair:** Mr Bartolucci, any opening remarks?

**Mr Rick Bartolucci (Sudbury):** No, I'll deal with them when we go through the amendments.

**The Chair:** We could begin with section 1 and continue in sequence. With respect to section 1, we do have a Liberal amendment, a motion found on page 1.

**Mr Bartolucci:** I move that subsection 1(2) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Sexual exploitation

"(2) For the purposes of this act, a child is sexually exploited for commercial purposes or is at risk of sexual exploitation for commercial purposes if it is reasonable to believe that the child has engaged in a sexual activity, for the financial or other gain of the child or another person, including,".

**The Chair:** Any further comments, Mr Bartolucci, on that motion?

**Mr Bartolucci:** No. I think it is self-explanatory.

**Mr Michael Bryant (St Paul's):** I agree.

**Mr Kormos:** My understanding is the amendment deletes "or will engage in a sexual activity." I want to make sure that I'm clear on that. I would ask Mr Bartolucci to explain the motive for the amendment.

**Mr Bartolucci:** There is the opportunity in the bill, the way it is written, to in fact corral someone who is not involved in this activity. Therefore, as a safeguard, I would suggest that, through this rewriting of that section, we avoid what some might deem to be a violation of human rights.

**Mr Kormos:** Then I would ask for Mr Bromm's assistance. I appreciate that "child" is defined here as being "an individual who is under 18 years of age." I would ask Mr Bromm if it is *prima facie* illegal in Canada for a person to engage in sexual activity for the financial gain of that person? Is it against the law to be a prostitute?

**Mr William Bromm:** I'm not a criminal lawyer—I have to clarify that—but my understanding is that, no, it is not against the law to be a prostitute, *per se*, but certain activities related to prostitution—communicating, procuring, living off the avails—are illegal.

1610

**Mr Kormos:** I would ask, then, the parliamentary assistant, how does this bill take heed of the fact that prostitution is *prima facie*, as I understand the law as well, legal? That is to say, it is not illegal. The word "legal" is bad because it implies that somehow it is regulated or somehow that it is codified. The act of prostitution is *prima facie* not illegal in Canada. How does the bill jibe, then, in the context of that reality? Because I assume we accept that premise.

**Mr Tilson:** I'll ask Mr Bromm to respond.



**Mr Bromm:** The most important thing, of course, is that the intention of the bill is not to create criminal activity or to punish anyone for criminal activity. It is basically child protection legislation. The courts in Canada have held that children in these situations can be deemed to be children in need of protection and therefore subject to certain provisions that would allow them to be removed from those situations. That's how the reconciliation takes place: one, it's not aimed at criminal activity, it's aimed at protecting children from certain situations; and the second being that this kind of sexual exploitation is among those circumstances in which the court has recognized that, yes, those are children who need protection.

**Mr Kormos:** I don't quarrel with that because I've read the Child and Family Services Act and that's the legislation you're talking about, that the courts have made it clear there could be an intervention should a child, under the definition of the Child and Family Services Act, be involved in this type of activity.

**Mr Bromm:** Also in the situation of Alberta's—the PCIP legislation, I keep calling it—Protection of Children Involved in Prostitution Act, which is specifically aimed at this population of children as well, it has been reviewed by the courts and the same was held; that is, this legislation is aimed at child protection purposes, it is a legitimate provincial aim, and therefore the legislation is appropriate for a provincial Legislature.

**Mr Kormos:** I don't know where the government stands on the motion, Chair. I should indicate that I find the motion preferable to the bill because it narrows the contemplation by a person effecting an intervention to one where there's reasonable grounds to believe. But I suppose having said that, surely there are circumstances—and if you're taking an interventionist approach you would not want to necessarily always do it after the fact. I know Mr Bartolucci has been an advocate for the bill and its spirit in his own right, in his own legislation, a private member's bill, I believe at least one—

**Mr Bartolucci:** Three.

**Mr Kormos:** Three private member's bills. I'm wondering whether Mr Bartolucci perceives this as protective or prophylactic in its own right in terms of preventing challenges. Is this designed to charter-proof the government's bill or is it in and of itself intended to narrow the scope of activities that can be contemplated for intervention?

**Mr Bartolucci:** I think both. Let me give you the example that was given to me just a week and a half ago that makes an abundant amount of sense. The way the government has it written is that if, for example, my daughter happened to be walking down the kiddie stroll in Sudbury, going from the shopping centre, called the City Centre, to the Mary-Marg Shoppe, another very nice dress store, she would be able to be picked up because the police officer could surmise that she was there “for the purpose of.” By rewriting it, it does not change the intent of the protection of children but ensures that human rights are not violated with the way it is written.

**Mr Kormos:** Not wanting to belabour it, Chair, but I might then go to the language here. It appears to be very specific language, “if it is reasonable to believe.” Is this the parallel of reasonable and probable grounds that I, quite frankly, am more familiar with?

**Mr Bromm:** Yes. You would still have to establish when you picked up a child that you had reasonable and probable grounds to believe that they had either engaged in previous conduct or they are likely to engage in that conduct. We actually reviewed with both the police and the child protection workers the example of a child who was just in a certain location, when we talked to them about the particular legislation. They really had two positions. One, of course, they're not going to just pick up a child without talking to them at the time to find out what the exact situation is. The second is that's the reason why the courts have to hold a show-cause hearing within a certain amount of time, so that they do have to demonstrate that they had reasonable grounds beyond just the child being in a certain location. They thought that this particular language was important so that they wouldn't have to prove there was past conduct; that you shouldn't have to wait for a child to be exploited before you can remove them from a dangerous situation, and that's what the amendment would actually do: it would limit the scope of their apprehension powers.

**Mr Kormos:** Just one more, Chair: why didn't you use “if there are reasonable and probable grounds to believe that the child has engaged in or will engage in”?

**Mr Bromm:** The reasonable grounds standard is just reflecting the civil standard for warrants. It's the same standard that's in the Child and Family Services Act, for example. Actually, the reasonable grounds is now the recognized standard. The reasonable and probable grounds is an older standard that everyone always goes back to, but really for warrants it's usually now reasonable grounds.

**Mr Kormos:** So it's an archaic phrasing?

**Mr Bromm:** It's an older phrase.

**Mr Kormos:** That betrays someone whose legal training is older than other people's.

**Mr Bromm:** Or someone who watches TV, and that's where you always hear those phrases. But really now “reasonable grounds” is a recognized phrase for the validity of a warrant.

**Mr Kormos:** At the end of the day, this really has nothing to do with people under 16, does it?

**Mr Bromm:** It could cover someone who's under the age of 16, but not necessarily. Those children could still be dealt with under the Child and Family Services Act.

**Mr Kormos:** Is there anything in section 1 that expands from what an intervention could consist of under the Child and Family Services Act?

**Mr Tilson:** It only applies to people under 16.

**Mr Kormos:** Yes, but I'm asking is there anything in section 1 in terms of the definition of activities that could prompt, we'll call it, an intervention?

**Mr Bromm:** The main difference is that the Child and Family Services Act sets out situations in which a child

can be deemed to be in need of protection. It does mention sexual abuse, but there is no specific mention of any of these enumerated activities. So what this section does is make clear the scope of the activities that will be covered by these protective provisions. The Child and Family Services Act is not as clear. There's only one reference to sexual abuse and exploitation in that section, without a definition as to what types of activities might be contemplated by that section. The reason there, of course, is that the Child and Family Services Act was originally structured to protect children from abusive parents in abusive parental situations, and this really goes beyond the scope of that type of legislation.

**Mr Kormos:** I want to make sure, because I put this to Mr Bartolucci, in view of clause 1(3)(a), the "attempting to engage in"—maybe I should wait till the amendment is dealt with, but do you see, even if the amendment passes, it being all nullified by clause 1(2)(a)?

**Mr Bartolucci:** No, I see them as two different things, Peter.

**The Chair:** Is there any further discussion on section 1?

**Mr Tilson:** You've probably guessed by now that the government is not in favour of the amendment. I won't add to what Mr Bromm has said, other than it does limit the scope of the act. I would quite frankly agree with Mr Kormos: if you did take out the words "or will engage in" I believe it would contradict clause 1(3)(a). However, we can deal with that again.

I think the main rationale is that just because a child has not yet engaged in dangerous activity doesn't necessarily mean that he or she isn't in need of protection. Therefore, as has been said by other speakers, this amendment would limit the scope of the act and accordingly the government will be opposing this motion.

1620

**The Chair:** Any further discussion? I'll ask the committee, are you ready to vote?

**Mr Bartolucci:** Chair, a recorded vote.

**The Chair:** We're voting on the Liberal motion to section 1, found on page 1.

#### Ayes

Bartolucci, Bryant, Kormos.

#### Nays

Beaubien, DeFaria, Dunlop, Tilson.

**The Chair:** I declare that motion lost.

**Mr Kormos:** We're going to debate the section now, aren't we?

**The Chair:** Yes. If the members are not ready to vote on section 1, I would entertain comments on section 1.

**Mr Kormos:** I want to go to the issue of subsection (3) and the attempt provision. Obviously that relates only to clause 1(2)(a), "including ... engaging in prostitution ... attempting to engage in prostitution...." I would ask the

parliamentary assistant why there wasn't similar attempt considerations of the other four enumerated activities. Let me put this to you. Again, I appreciate Mr Bartolucci's bill in narrowing the scope of the grounds or making them clearer, but you have "attempting to engage in prostitution" but you don't have "attempting to provide escort services." They don't deal with the definition of "child," obviously, and that's going to be something about which I have great concern. But a person who is advertising themselves as available for escort is not providing escort services, arguably, although I'm sure some crafty lawyer would try to say the mere fact of advertising, holding oneself out as an escort, is providing escort services. The counter-argument is going to be no, it was only an attempt to provide an escort service. I suppose, similarly, if a young person answers an ad to be a model, whatever guises are used to enlist people in these businesses, the fact that they were applying for the position or presenting photographs of themselves, or doing whatever they had to do to be contemplated for being listed on somebody's register, would again be "attempting." Similarly, for sexually explicit pornographic images, if a person who is contemplated as being the subject matter of this act is in a porno studio but has not yet been filmed, the act would then presumably not incorporate them.

Why I say this is all relevant is because you have a non-illegal activity—although, of itself, I am acknowledging for children under 16, or for any person, an activity that many people, especially in view of the circumstances, would deplore, prostitution being considered an activity which gives rise to a presumption of sexual exploitation or at risk of sexual exploitation, and then you clarify it by "attempting to engage in prostitution," which presumably means the very same thing as was contemplated by Mr Bartolucci's amendment. In other words, if I'm a young person contemplated by this act and on the wrong corner of a downtown city street, standing there, waiting for the bus that never comes, that seems to me to be getting pretty close to "attempting to engage in prostitution," because it's not attempting to engage in a sex act—do you understand what I'm saying?—it's not a scenario where, for instance, the deal has been made and the police interrupt it before you get down to the exchange of favours, if you will, itself. But "attempting to engage in prostitution" seems to me to contemplate literally standing on a street corner. I put that in a very crude way. I wonder if Mr Bromm would address that, and if I'm wrong, just say so.

**Mr Bromm:** I think the main point about subsections (2) and (3) is that they've been designed for different purposes. Subsection (2) sets out the circumstances in which a child could be found to be sexually exploited, and that's why they're enumerated in that way. It covers off both past activity and possible future activity, which would include, by definition of future activity, any attempt.

Subsection (3) is a deeming provision. It's not a definition provision. What it's meant to do is to just provide



guidance to the court, to say that in certain circumstances when you prove these activities, you don't need to go any further to prove that it's sexual exploitation or that there were past activities or future activities. Once you prove that a child was attempting to engage in prostitution or was in a common bawdy house, that's all you need to show that that child has been sexually exploited. That's really all subsection (3) says.

The reason why subsection (3) doesn't enumerate the other activities is because it is broadening the scope of what people generally understand to be regular prostitution activities—standing on the corner, as you refer to it. Because of that it's likely that before the court is going to contemplate removing someone's liberty, they're going to want evidence of exactly what that person was doing. Therefore the government did not want to include those activities in the deeming provision, because they really cover long-standing and historical activity that everyone agrees is sexual exploitation. It's not defining the conduct that is covered by the legislation, it's simply saying that once the police officer or child protection worker shows A or B, that's all they need to show in order to prove that there were purposes to remove the child from that situation.

**Mr Kormos:** So you have no appreciation of my concern about subsection (3) not paralleling subsection (2)?

**Mr Bromm:** No, because they're for different purposes. From my perspective, the subsections work together as opposed to having any conflict.

**Mr Kormos:** I don't want to prolong this, but clause 1(2)(a) says "engaging in prostitution," clause 1(3)(a) says "attempting to engage in prostitution," and clause 1(2)(b) says "engaging in any sexually explicit activity in an adult entertainment facility"—a strip club—"or in a massage parlour." But you don't have "attempting to engage" in an activity in a strip club or a massage parlour. That's where my concern is.

**Mr Bromm:** That difference would be covered off, because in those situations the child would be in a specific facility. Therefore, the fact that the child is in a specific facility would need to be coupled with what that child was actually doing. It's more the location of the child than their activities and so it doesn't need to be covered by an "attempting" provision. What the "attempting" is trying to do in clause 1(3)(a) is to say that if you have evidence that a child is attempting to engage in prostitution—and usually that's going to come either from the police conducting an undercover operation in which they're posing as a john, to use the language—if they actually have evidence, "Yes, that's what that child was attempting to do," that's all the court is going to need to hear, as opposed to having to show, under subsection (2), that the child was likely to engage in prostitution, for which you'll need a lot more evidence, because you don't have the specific evidence of an undercover cop saying, "I spoke to the child. She or he offered services for a certain amount of money." That's all they need to know. If that hasn't taken place, the court

is going to want more evidence of why you think that child was attempting to engage in prostitution if they didn't actually make an offer.

**Mr Kormos:** Except that what's happened there is that a Criminal Code offence has taken place.

**Mr Bromm:** Right.

**Mr Kormos:** Once again, soliciting, which could be perceived in the colloquial as "attempting to engage in prostitution," is an offence. That's what the offence is, for all intents and purposes, for the purpose of prosecuting people and bringing them before the courts.

I hear you and I'm listening very carefully. In terms of, let's say, even clause 1(2)(e)—and I'm not going to generate the debate over Maplethorpe here and now, but you know what I'm getting to. Let's abandon Maplethorpe and let's talk about Sally Mann, for instance. You might be familiar with the approach of Customs to her very legitimate, mainstream photography of mostly her own kids. You've got "for the financial or other gain of the child or another person." "Other gain"—however much we may find the selling of young people—and let's say the notorious Calvin Klein, amongst others, in terms of how young people are portrayed on billboards and magazine spreads—the fact is, for better or worse, again, that is perceived as legitimate activity. But when I look at "sexually explicit or pornographic," clearly then the courts are saying, "You put in 'or.' It's clearly an exegetical 'or' here, not a conjunctive 'or,' so it means two different things." So does a Sally Mann photo, then, and the young people who might pose in a Sally Mann photo, constitute a "sexually explicit" image? Clearly not pornographic; that's a given, that's an assumption. Does a young person in a Calvin Klein type of ad constitute "sexually explicit"? Yes, I think so. I've seen the glossy magazines, seen the large billboards. I'd say they're pretty sexually explicit. Is that really what's being contemplated here?

1630

**Mr Bromm:** No, and I think that's actually the main point, that the sexual exploitation definitions and provisions have to be looked at in the context in which they'll be used. I think the definitions were meant to be broad to protect as many children as could be and would be in need of protection under those provisions. The definitions may inadvertently be able to be applied to a wide range of circumstances that are not contemplated by the act, but it's necessary to have the broad definitions to provide a broad range of protection. With the safeguards of the police and the child protection workers knowing the context in which they will use the definitions, and the context of having courts subsequently review the apprehension, we would be able to exclude the inappropriate use of those provisions.

**Mr Kormos:** Help me with the Child and Family Services Act. The "child in need of protection" is defined in a very broad sort of way, isn't it?

**Mr Bromm:** Yes. There are, I think, 10 different paragraphs that define the situations in which a child may

be in need of protection, only one of them dealing with exploitation or abuse of a sexual nature.

**Mr Kormos:** Yes. But you agree with me that every one of the items enumerated here would be logically contained within that one definition in the Child and Family Services Act.

**Mr Bromm:** Not necessarily, because that act uses the terms "sexual exploitation" and "abuse," but in the context of the abuse and exploitation happening at the hands of a parent or someone in "care and control of the child." These contemplate a much broader range of individuals who might be exploiting the child.

**Mr Kormos:** In the hands of a parent or someone with care and control of the child.

**Mr Bromm:** I can actually find the provision, if you want.

**Mr Kormos:** Please, because I think that's important.

**Mr Bromm:** This in subsection 37(2) of the act. I'm just trying to find the exact provision: "the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility." So it's very limited, that it's either in the hands of the parent or it's in the hands of another individual but the parent knows it's taking place.

**Mr Kormos:** All right. So you mean to say that a runaway 14-year-old who's working the streets as a prostitute cannot be regarded as a child in need of protection because there's no suggestion that her parents are either condoning it or promoting it or even aware of it?

**Mr Bromm:** No. I think there are situations where that child would be covered, and the courts have given a very liberal interpretation to this provision. But the more you press the boundaries, obviously, of the provision by including situations which wouldn't have been contemplated at the time this act was drafted, you do increase the likelihood that the court is going to say, "I'm not so sure this is covered." But I think the weakness of the Child and Family Services Act in this situation isn't limited only to how it defines "sexual exploitation"; it's also linked to how you are able to treat a child who is apprehended under that statute. I'm sure you'll get to that particular limitation later.

**Mr Kormos:** I've had some significant interest in that and did make reference to the Child and Family Services Act during second reading debate.

**Mr Bromm:** I think the main point is that this definition was intended to be as broad and clear as possible to avoid there ever being litigation in the court about what's included and what isn't in terms of "sexual exploitation," which is a possibility with a more vague definition.

**Mr Kormos:** OK.

**Mr Tilson:** I think we're finished section 1, Mr Chairman.

**The Chair:** Are we finished discussion on section 1?

Are the members ready to vote on section 1?

All those in favour? And those opposed? I declare section 1 carried.

Section 2: I see no amendments.

**Mr Kormos:** Here's where we get into an area that's of great concern, because what this does of course is define "child" as "an individual who is under 18 years of age," whereas the Child and Family Services Act would define a child as someone who is under 16 years of age. And the scope of the mandate of child protective services is restricted to that but for the cases of children who are wards or quasi-wards before they reach the age of 16, where that wardship or quasi-wardship can be extended beyond that. I'll leave it at that to avoid displaying less than total familiarity with that act.

What's the status of a 16-year-old at common law in Canada right now in terms of their ability, their capacity, to abandon their parents, if you will, in terms of parental control, make decisions for themselves etc?

**Mr Bromm:** A child over the age of 16 does have a right to live independently of his or her parents, but of course the right would be subject to some controls; for example, in Alberta's case—they would have the same legislation if this legislation is passed—they recognize a child as being up to 18. And so even though there would be the general idea that someone over the age of 16 could live independently, that act recognizes that at certain times the right to live independently is subject to some limits where the child is endangering himself or herself. This would be one of those situations.

**Mr Kormos:** What's the origin of the age of 16? Because I understand that across Canada, different provinces had different ages for, for instance, their historic training schools acts and so on. They had the Juvenile Delinquents Act, which imposed a standard, but there was some interrelationship between respective provincial jurisdictions and the determination of ages for the purpose of training schools acts. Am I correct so far?

**Mr Bromm:** Yes.

**Mr Kormos:** What's the origin of 16?

**Mr Bromm:** I'm sorry, I can't tell you what the origin is other than to tell you that it's been the long-standing definition within the Child and Family Services Act, that its point for child protection purposes is 16 years or under.

**Mr Kormos:** OK. Fair enough. Maybe you don't know why, but was there any consideration of an amendment to the Child and Family Services Act concurrent with this bill that would amend the Child and Family Services Act so that you would have parallels in the definition of "child"?

**Mr Bromm:** I can't really answer that, other than to say that the government's intention in having separate legislation would be similar to what they did in Alberta, and that was to have legislation that focused specifically on the needs of this particular population and to not look at the policy of child protection over the age of 16 in general. I can only respond to the intention to have specific legislation for this population, but I can't say about other deliberations for other choices they might have had.

1640

**Mr Kormos:** As I understand your explanation of section 1 and now the brief comments on section 2, this



is a completely different regime than the Child and Family Services Act.

**Mr Bromm:** Yes.

**Mr Kormos:** Therefore it wasn't a matter of amending or contemplation of amending the Child and Family Services Act with, let's say, the five activities contained in—although it's not an exhaustive list—section 1? It wasn't a matter of amending the Child and Family Services Act to deal with that, but a goal of creating stand-alone legislation?

**Mr Bromm:** And also to recognize that in order to do what they wanted to do in this legislation in the Child and Family Services Act, it would have required a substantial overhaul of that legislation because there are provisions in that legislation which actually prohibit safe facilities from doing what is contemplated by this act. So, for example, in the child protection provisions of the Child and Family Services Act, you are not allowed to involuntarily detain a child. If you remove a child and you take them to a safe facility, that facility is not able to keep that child against his or her will.

We heard from police and child protection workers that often when they pick up children who are involved in these activities, they take them to Moberly House or Covenant House, to use the Toronto example. Those children are out the door the moment the police leave and there's nothing those facilities can do to stop those children from running away. That's because the Child and Family Services Act was created to address a different child population than this population that is a very heavy flight risk, where the other children are not deemed to be as heavy a flight risk. The only way you could involuntarily detain a child under that statute is under the provisions that deal with particular mental incapacity and danger to themselves or to the public in very specific circumstances. So it would have required an overhaul of that statute beyond simply redefining age and redefining specific activity.

**Mr Kormos:** What you really mean is that with a person under 16 in the custody or in the care and control of family and children's services, family and children's services have no more or no less powers than a parent does, for instance, to keep that child at home?

**Mr Bromm:** Subject to the order of the court placing the child somewhere else, when they pick up a child under that act they really cannot involuntarily detain the child. They can take steps. They can take their clothes and their shoes, as they often do, and give them pyjamas and try to keep them from running. But we know from the police that with this particular population—middle of February, no matter how cold it is, paper slippers—they're out the window.

**Mr Kormos:** So in contrast to the existing legislation, this law is designed to lock these people up, if need be?

**Mr Bromm:** What it's designed to do is allow you to hold the child. So, yes, you can lock them up if it's necessary.

**Mr Kormos:** To hold them involuntarily.

**Mr Bromm:** Yes, as long as a court has reviewed it and said that's necessary. The legislation doesn't require involuntary detention but it permits it if it's appropriate.

**Mr Kormos:** So this is a radical change in the law because you're telling me that this is dramatically different from the Child and Family Services Act in that this bill allows the involuntary detention of the people being contemplated by the bill?

**Mr Bromm:** Yes, if the conditions set out in the bill are met, it would allow a child to be held against their will.

**Mr Kormos:** Without that child having been charged with the commission at any crime.

**Mr Bromm:** No, because it's not criminal legislation. It's for child protection purposes.

**Mr Kormos:** Right.

**Mr Bromm:** I can only use the example in Alberta, of course, because they're the only other jurisdiction that has specific legislation. The courts there have said it's appropriate legislation and that involuntary detention in that circumstance is also appropriate.

**Mr Kormos:** I want to ask now about the 18 years of age once again. What happened? What's the difference between 16 and 18 in terms of how this legislation is drafted as compared to, let's say, 19?

**Mr Bromm:** The only response I can give to that is to know that in drafting it the government looked to Alberta, which is the only jurisdiction that has similar legislation, as I've mentioned. Also, in speaking with the police and children's aid societies and saying, "How should 'child' be defined?" they were very clear that they thought the definition should be 18 and under. When you get into 19 and the early 20s the consideration was that you are entering adulthood at that phase and this legislation is really meant to cover a different population.

**Mr Kormos:** Because you know that there are some people who argue that it was entirely inappropriate for the federal government, with its Young Offenders Act, to put 16- and 17-year-olds into a youth regime. You're familiar with those arguments, right?

**Mr Bromm:** Yes.

**Mr Kormos:** Some political leaders are very vocal about that, some of the concerns about 16- and 17-year-olds being treated as young persons along with 12-, 13-, 14- and 15-year-olds. Some of the people who find that highly objectionable, as I understand it, have been at least one or two Attorneys General of this government, unless I've misread their comments. Am I being unfair in that regard?

**Mr Bromm:** No, but I think in that circumstance the government has recognized that there's a difference between a 16- and 17-year-old who is committing a very serious criminal offence, a violent offence, for example, versus a 16- and 17-year-old who is being sexually exploited. The latter example is a child in need of protection, not a child who should be treated as a young offender under the Criminal Code or the Young Offenders Act.

**Mr Kormos:** I'm sorry—again, you're here as a civil servant—but I just find it a little schizophrenic, Chair, that on the one hand this very same government argues that 16- and 17-year-olds, for the purpose of the application of the law, shouldn't be treated as children—and it appears that successive Attorneys General have advocated for the removal of 16- and 17-year-olds de facto from the regime of the Young Offenders Act into the historical world of the adult Criminal Code—yet here they're saying that 16- and 17-year-olds basically should join the population of young people who are contemplated as capable of being children in need of protection, to wit, under the Child and Family Services Act. I just find that peculiar.

**Mr Tilson:** Don't worry, Mr Kormos. The Senate today, as I understand it, is suggesting an amendment to the Criminal Youth Justice Act to put it back to the way it was with the Young Offenders Act.

**Mr Kormos:** Before the Young Offenders Act?

**Mr Tilson:** No, no, to the Young Offenders Act, which makes it even stranger.

**Mr Kormos:** I'm sure it does. I'm old enough to remember the Young Offenders Act when it was first implemented.

**Mr Bryant:** I would advise you, as counsel, not to comment any further.

**Mr Kormos:** It wasn't all as straightforward as it looked. There was checkerboarding across the country, wasn't there, in terms of how young people were treated, be it the age of 16 or the age of 18? In fact, some jurisdictions made a distinction between whether you were a young man or a young woman in terms of how you were treated by the respective youth criminal justice system or the adult justice system. Isn't that correct?

**Mr Bromm:** I can't comment because I don't have experience in the criminal law or how young offenders were treated.

**Mr Kormos:** A long time ago.

**Mr Bromm:** Or even yesterday.

**Mr Kormos:** Mr Tilson would know a long time ago.

I am very troubled, and will speak further as we get further into the bill, in terms of the types of things that can be imposed upon a person being dealt with by this act. I'm very troubled about the adoption of the age of 18. I hear what's being said, but then one could say, "Why not 19, why not 20, why not 21?" We live in a myriad of thresholds in terms of age. One of them is clearly the age of 12 in terms of the age at which criminal or quasi-criminal culpability can be assigned, because prior to that there's no capacity for there to be an assignment of criminal or quasi-criminal culpability, and some people have wondered about that. They say that if an 11-year-old does something that is as horrendous as what a 14-year-old—I mean, people have expressed frustration about not being able to treat 11-year-olds as if they were 12-year-olds. Similarly, 16 is clearly historical and I understand that's primarily a common law age. Similarly, 18 and 19 have been imposed legislatively, in part through training schools acts of different prov-

inces—not this one—but then by the imposition of, for instance, the age of consent for a number of activities. Then the age of 21 has historically been regarded as some sort of point of right of passage. Probably that was only because you could drink at the age of 21.

**Mr Marcel Beaubien (Lambton-Kent-Middlesex):** What are you suggesting?

1650

**Mr Kormos:** I'm just troubled that the thrust of the explanation seems to be we copied the Alberta legislation. I'm concerned that the Alberta history in terms of, for instance, their parallel of the training schools act—their legislation reflects their history as distinct from this legislation necessarily reflecting Ontario's history. I think it's certainly of interest.

**Mr Bromm:** I would just like to clarify that, and perhaps you misunderstood. When they drafted the provision and chose 18, they looked to Alberta but they also based it on their discussions with police and child protection workers and the front-line service providers, like Moberly House and Covenant House, in terms of choosing an age. So I would have to say that it's not accurate to say that they simply copied Alberta's legislation in that regard.

**Mr Kormos:** OK. If I may then move on from that, two issues: safe facility and society. First, in dealing with society, the children's aid society, family and children's services, or any other number of names that it can be identified by, has accepted the mandate provided for them in this legislation?

**Mr Bromm:** Yes, the government consulted with them during the development of the legislation and after it was introduced.

**Mr Kormos:** And "safe facility," that's something that's troubling because it's something that's down the road; it's going to be done by designation. Is there any design, any model, for what constitutes a safe facility?

**Mr Bromm:** All I can say is that the Ministry of Community and Social Services, as the ministry responsible for children's aid societies, is in the process now of developing a framework for the safe facilities. The intention is that if the legislation is passed, then they will put out a request for proposal that will have that framework in it, set out the services that are contemplated under the act and the requirements, and then facilities will be able to apply through that RFP process. Usually, they will be facilities that are already recognized under the Child and Family Services Act that will be able to provide the additional services contemplated by this act.

**Mr Kormos:** But you tell us that family and children's services doesn't currently have the power to involuntarily detain somebody.

**Mr Bromm:** Yes, but it would be provided to them through this legislation.

**Mr Kormos:** Right. Is there any assurance that a young offender facility will not be used as a safe facility?

**Mr Bromm:** This act doesn't talk about who would be used and who wouldn't be used in terms of a safe



facility. The only thing I can say is that my understanding is safe facilities will be separate from young offender facilities as a necessary step to ensuring that this is recognized as child protection legislation, not as young offender legislation.

**Mr Kormos:** I understand that, but that would be the same way that young offender facilities are currently segregated and isolated from adult facilities where they are occupied on the same grounds.

**Mr Bromm:** That's beyond what I can comment on.

**Mr Kormos:** You're talking about the need for, I trust, a wide range of types of facilities, but it includes, among other things, facilities where a person can be involuntarily detained. Right?

**Mr Bromm:** Yes. There's a provision in the legislation that says that a child can be kept in a locked facility or a locked area of the facility if it's appropriate. So those safe facilities will have to have the means to have a child involuntarily detained, probably by either having a room that can be locked from the outside or having a separate section of the building that might be able to house more than one child, for example, that can be locked from the outside.

**Mr Kormos:** Not much work has been done on the safe facility issue yet, at least any work that's reflected in the bill.

**Mr Bromm:** The bill doesn't set out the framework, but the Ministry of Community and Social Services has been working on what that framework would look like and they've had a substantial amount of time because, as you know, the bill had been previously introduced, did not proceed, and then was reintroduced. So I would say they're substantially far along in terms of developing what that framework would be.

**Mr Kormos:** You see, my problem is that the Young Offenders Act historically has always attempted to provide a sense of comfort about young offenders not being in the same facility, the same lock-up, as adults. But in practice it has more often than not been either illusory or mere lip service. That is to say, in police stations, police lock-ups, for instance, yes, young offenders aren't kept with adult offenders who are being held in custody prior to an appearance, let's say, before a justice. But effectively what that means is that there's one six-inch block wall between the young offender being kept in cell A and the adult being kept in cell B. The young offender hears, experiences and enters the ambience, the environment, of an adult detention centre very, very rapidly. Similarly, in detention centres there's been the same artificial division. It's been a whole process of building a door here and making sure young offenders come in the back door, whereas adult prisoners come in the front door. I'm very concerned.

The fact is, the Young Offenders Act at least tried in its own legislation, in its own body—it was unsuccessful—to ensure that young offenders aren't kept in the same facilities as adults. That's been interpreted very liberally, I suppose, in terms of what that isolation consists of that's separate. I'm concerned that in this bill

there's no guarantee that a safe facility will not include or cannot be located in a young offender facility, especially in the context of the privatization of young offender facilities and the eagerness with which I contemplate that operators of young offender facilities from the private sector will have to say, "Oh, we will provide involuntary detention areas for so-called children apprehended under this legislation."

That bothers me a great deal because that means that these people, again, notwithstanding the best efforts—and I understand the very careful use of language on your part; I understand it and I commend you for it—that this is not to be criminal or quasi-criminal legislation. It's legislation that has the capacity to lock young people up, has the capacity without there being any charges laid or even any crime committed without charges being laid and, similarly, I submit to you, has the capacity to literally lock these young people up in what is de facto a young offender facility.

I find that extremely troublesome and I submit that's a concern because it's mere designation. There's no definition, there's no qualification. It's a premises designated by the minister. It means there's no qualification, and the very careful but nonetheless thorough description by Mr Bromm of the clear capacity and intent of this legislation to effect involuntary detention leads me to that. I wanted to express those concerns and indicate my opposition to the definitions in section 2.

**The Chair:** We've been discussing section 2. Is there any further discussion?

**Mr Tilson:** We're ready to vote on section 2, Mr Chairman.

**The Chair:** Are members ready to vote?

With respect to section 2, all those in favour? And those opposed? I declare section 2 carried.

If we could turn to section 3, I would ask if there are any questions or comments on section 3.

**Mr Kormos:** This definition in terms of "court" seems to include what we in small towns—maybe you do too—colloquially refer to as provincial court, family division, what I understand is now called the Ontario Court of Justice. I hearken back, Parliamentary Assistant, to Bill 117. You'll recall it was mentioned in the House last week and put to your Attorney General in a question from Ms Churley. You'll recall the debate around Bill 117 and the capacity of the system to deal with Bill 117 applications: whether there were going to be enough JPs, whether there were going to be enough advocates etc.

I've been in numerous family courts from time to time over the course of many years now; I'm talking about what we call the old provincial court, family division. Family court judges, I appreciate, are blended now with so-called criminal judges. These judges, these courtrooms, are stacked up, backed up, out into the hallways and on to the streets. We're witnessing sausage-factory justice, and judges, clerks and the whole nine yards working very hard.

1700

One of the more frequent—not the most frequent—types of complaints in my constituency office is people

who are in the provincial court, family division system, just regular folks trying to get a child support order or a custody order or an access agreement, who show up at the family court at 9 in the morning, endure a list that's three arms long and have to sit, not beside each other—talk about estranged spouses—but in close proximity to each other, and then at 4:30 are told very apologetically by a judge, "Everybody else is adjourned two weeks hence and we'll try one more time."

Where and how are our courts going to be able to accommodate what could conceivably be a considerable new load of considerations? I'm talking about the traditional, historical family court system. I hope you agree with me that these courts are backed up and the staff and judges are working extremely hard. Where is the capacity going to be found? For instance, are there going to be judges designated to deal with applications under this bill? Are there going to be courts that are designated?

One of the regrets a whole lot of people had about the blending of the criminal judge with the family judge was the prospect of a judge losing expertise or at least losing the cultural sensitivities that family court judges acquire that were distinct from criminal judges. Are special courts or special judges contemplated to deal with these applications? Surely the province wouldn't be embarking on this endeavour if it wasn't contemplated that a significant number of young people were going to be apprehended under the bill.

**Mr Tilson:** I'll have to let Mr Bromm respond to the question as to courts and processes, although I don't think the bill is designed to deal with assisting children specifically or completely with the court system. There may be other areas in which this legislation will hopefully help children.

I can only refer to a statement made by Mr Baird, in his capacity as Minister of Community and Social Services, back in June when this legislation was brought forward. I have a press release before me which I think is in the package we all have. It's under tab B3. The press release dated June 21, 2001, states, "'We are committed to ensuring that sexually exploited youth get the help they need to start a new life,' said Community and Social Services Minister John Baird. 'Our government will spend up to \$15 million annually on the services and support required by these children.'" That's an indication as to what the government is prepared to do as far as providing funding.

The question as to new courts and specialized areas, I don't know that answer. Whether Mr Bromm can enlighten the committee on that, I don't know.

**Mr Bromm:** The only thing I can confirm is that in choosing this court level that it would go to, we ensured that we consulted with our court services division, and we had legislative counsel to rely on in ensuring that we were referring these matters to the appropriate level of court. In terms of the other issues you brought up, I'm not really in a position to comment on those.

**Mr Kormos:** Have you reflected on them?

**Mr Bromm:** We have been working with our court services division—

**Mr Tilson:** Mr Kormos, you can't ask us how we're thinking, surely.

**Mr Kormos:** I didn't ask him what he was thinking, I just asked whether or not he had been thinking about it.

**Mr Tilson:** Mr Chairman, surely that's not an appropriate question. You can ask me what I'm thinking, but I don't know whether you can ask him.

**Mr Kormos:** I know what you're thinking. I can read you like a book. Mr Bromm is a little more complex.

I've indicated my concerns about that as it applies to section 3. I should determine, though, where the justice of the peace and the judge—the justice of the peace has a preliminary role and the judge has a determinative role?

**Mr Bromm:** Yes. The role of the justice of the peace would be only with respect to the initial show-cause hearing. The subsequent and full hearing that determines the full period of a child's intervention has to be done before a judge.

**Mr Kormos:** Further to that, you understand that most family courts—what we call family courts down where I come from—don't have justices of the peace sitting in them. The JPs are sitting in bail court. I know you've got old city hall here and College Park and courtrooms all over the city, but down in Welland, for instance, we've got the one courthouse. There's a JP who comes in at 9 in the morning and hears adjournments until 10 or so, and then the judge comes in. Then there's another JP who will conduct bail hearings. Once again, those JPs are dealing with court lists, and you might have recognized one or two of them speaking out publicly with respect to those lists, for instance, here in Toronto. The JPs are conducting bail hearings late into the evenings. Some of them are sitting and causing the their staffs to sit 10-, 11-, 12-hour days.

You agree with me that this is a highly sensitive bit of work that JPs and everybody else involved in the application of this act are being called upon to do, isn't it?

**Mr Bromm:** Yes.

**Mr Kormos:** And it requires special care and attention, because you're talking about safeguarding the well-being of the child, as defined, in the course of doing this, right?

**Mr Bromm:** Yes.

**Mr Kormos:** Where does the child go who is considered a flight risk when they're brought into court down in Welland, for instance, or in St Catharines? If they're considered a flight risk, what happens to them while they're waiting for their appearance before the JP? Do they get locked up in the holding cells?

**Mr Bromm:** I'm not in a position to comment on what will happen in specific locations other than knowing that that's an issue the Ministry of Community and Social Services has to look at, with the children's aid societies and the safe facilities, in terms of how the court process will actually work.

**Mr Kormos:** They get put into the bullpen along with other young people?



**Mr Tilson:** You're probably returning to your question on safe facilities, Mr Kormos. Obviously that is being developed by the Ministry of Community and Social Services.

**Mr Kormos:** With respect, sir, I've been in many a holding cell and bullpen over the course of many years across this province, and other people have too. They are not nice places, and nobody is suggesting that perhaps they should be nice places. In view of the courthouses across the province, some of them relatively new, some of them antiquated beyond anybody's imagination, I'm just contemplating the sort of facilities that are in those places for a person who may be considered somebody at risk of flight and the types of environments that are there to be utilized to effect a secure custody of them until they appear before a JP.

I'm also contemplating people having to sit and wait, because I know other people are doing it. In fact, people charged and being held in jails are waiting days for their bail hearings. They are making their first appearance before a justice, hopefully, in the appropriate period of time. I'm just extremely concerned about the capacity of the facilities. Again, the supervisory role of a justice and then of a judge, how can I argue against that? Other elements of the bill, I can.

But I'm extremely concerned about the regime you're creating here. You insist that these young people have committed no crime, yet I'm telling you, sir, that my experience, my familiarity with the system—and I could be wrong; I could be very wrong—is that these young people who you say have committed no crime, and indeed they haven't, who are not charged with any offence, and indeed they won't appear to have been charged with an offence, will be processed in a manner so akin to that of a person who is arrested, charged and detained pending a release hearing that you won't be able to distinguish them from the full-fledged criminal, or the full-fledged accused, at least, walking in with a list of Criminal Code offences. That's my concern. I believe the model that's being proposed here, in the context that we're talking about it, without creating a complementary model for dealing with them in the system effectively criminalizes them; perhaps not for the purpose of charging them but for the purpose of treating them. I leave it at that.

1710

**The Chair:** We've been debating section 3. Are members ready to vote? All those in favour of section 3? Those opposed? I declare section 3 carried.

With respect to section 4, we have a government amendment.

**Mr Tilson:** In subsection 4(6) there was a drafting error. Accordingly I would move that the English version of subsection 4(6) of the bill be amended by striking out "judge" and substituting "justice." The word "justice" is used throughout the rest of the bill and this amendment would make subsection 4(6) consistent with the rest of the bill, the rest of the act.

**The Chair:** Any further comments on this government motion?

**Mr Bryant:** Just a question. While we're cleaning it up, is there any corresponding change that needs to be made to the French version?

**Mr Tilson:** I don't believe so, Mr Bryant.

**The Chair:** Mr Kormos?

**Mr Kormos:** As I understand it, it is, in effect, almost correcting what could be a typographical error, to create the consistency.

**Mr Tilson:** That's right.

**The Chair:** We have a government motion on page 2 to amend section 4. Are we ready to vote? All those in favour of this amendment? Any opposed? I declare this amendment passed.

Is there any debate on section 4 itself?

**Mr Kormos:** Appreciating that the wording is used in section 1, but "at risk of" as compared to, *de facto*, "sexually exploited"—and it does go back to section 1. Again, the list there is not exhaustive, it's illustrative, but "at risk of"—I understand the deeming, for instance, in the latter part of section 1, the way you explained that to me, but "at risk of" seems to go to what Mr Bartolucci's amendment was purporting to. Is "at risk of," being undefined, purposely as vague and broad as it sounds to me?

**Mr Bromm:** The wording—

**Mr Kormos:** Perhaps we should let Mr Tilson first.

**Mr Tilson:** No.

**Mr Bromm:** The wording of section 4 reflects the wording in section 1 in terms of saying the child has been sexually exploited or is at risk. So, again, it covers both the fact that certain conduct has taken place or there are reasonable grounds to believe that certain conduct will take place in the future. That's what the "at risk of" is meant to cover, and again just to cover those situations where you would otherwise have to wait for the exploitation to take place before you can remove the child from the situation, it being considered not appropriate to have to wait for that to happen. But in terms of defining "at risk," that will be something the courts will have to do in terms of their show-cause and subsequent hearing in setting out whether or not the circumstances contemplated by the act are—

**Mr Kormos:** I'm not aware of any section of the bill that assists the court in determining what "at risk of" means.

**Mr Bromm:** I think it was a provision that was considered to be something the court would not need guidance on.

**Mr Kormos:** I find it an incredibly broad concept, don't you?

**Mr Bromm:** For these purposes, I think it's necessarily a broad concept.

**Mr Kormos:** Yes. So you and I are in agreement. It's an incredibly broad concept, with nothing in the bill to assist a court. Is there a parallel, other than in Alberta? That doesn't come from the Child and Family Services Act, does it?

**Mr Bromm:** The Child and Family Services Act recognizes the notion of there being risk as well. Again,

activity does not have to have taken place before protection can occur.

**Mr Kormos:** But it does that within the context of a child's family home or their actual setting.

**Mr Bromm:** In that environment, yes, but risk is recognized. And there isn't a definition, for example, in that act of what risk actually means.

**Mr Kormos:** I put to you that it could be argued that a kid who left small-town or big-town Ontario, came to Toronto and ended up homeless on the streets of downtown Toronto, with no source of income, was at risk of either the lure of the squeegee or the lure of the sex trade. That's not unreasonable, is it?

**Mr Bromm:** I guess we have different ideas of how the court would interpret the provision.

**Mr Kormos:** I don't understand. What if a homeless kid is hanging around with prostitutes? In your mind, does that start to enhance the "at risk of"? What if a homeless kid has had sexual experience as compared to having had no sexual experience? Would that create a higher or lower risk? I quite frankly don't know. What if a homeless kid came from a very strict, religious, moral background—not that religion is the sole source of morality, but for some people they are regarded as interconnected—a good Catholic boy or girl—and I can say that because my family background is Catholic—as compared to one whose family wasn't spiritual, what are you getting the "at risk" from? Are you getting "at risk" from the subjective observation of that person and who they are, their background, their environment, or their behaviour? That's my problem with "at risk of," because nowhere in the bill do we give a judge any assistance in determining what "at risk of" means.

Mr Bartolucci tried to address a concern with his amendment to section 1, but the "at risk of" provision seems to be—talk about holes you could drive a Mack truck through, blindfolded and in reverse. This seems to be one of those. Am I being unfair?

**Mr Bromm:** I think when the court looks at "at risk," and for the purposes of the rest of the act, it will be guided by the definition in section 1 that says what sexual exploitation is and includes mention of specific activities. I think risk will be interpreted by reference back to the likelihood or the evidence that those activities have taken place. That's why I think further guidance for the court isn't required in the bill, because it will be guided by the overall intent and purpose of the bill as set out in section 1, which is clear that it's not meant to just pick up a child who's on the street but a child who has engaged in or is likely to engage in enumerated activities.

**Mr Kormos:** You're talking about information being sworn. One of the problems with a bill like this is that we don't have the forms that are usually generated by regulation. So you're talking about, effectively, an arrest warrant under section 4.

**Mr Bromm:** It would be more in the nature of a warrant to pick up a child under the Child and Family Services Act.

**Mr Kormos:** But under this act.

**Mr Bromm:** Under this act, but they would look very similar.

**Mr Kormos:** You talk about the information of a warrant for—I'm paralleling it to arrest, maybe for my own motives or maybe just because it's more convenient for me to identify with that, but information for a warrant is a very brief document, isn't it?

**Mr Bromm:** I'm not familiar—the ones I've seen are very brief, but I haven't seen a wide range of them.

1720

**Mr Kormos:** The ones you've seen are pretty typical, because they're very brief; once again, reasonable and probable grounds, at least in the old days, to believe that Peter Kormos did commit the offence of—pick your list: a Criminal Code section, a provincial statute. Bingo, that's the information. That's pretty sparse information to intervene in this heavy-handed way, isn't it?

**Mr Bromm:** The only way I would respond to that is to say that the information that's contained in the warrant itself probably does not reflect the extent of the information that has been provided by the police officer or the child protection worker when they make application for the warrant. So the judge or justice is going to say, "What is your evidence for the warrant?" and they'll hear the evidence and issue the warrant. They may not necessarily repeat all of that evidence in the warrant itself.

**Mr Kormos:** This is entirely ex parte, isn't it?

**Mr Bromm:** Yes.

**Mr Kormos:** It's without notice to the person whose rights are being apprehended and detained, isn't it?

**Mr Bromm:** Yes.

**Mr Kormos:** In that respect, it's very similar to a criminal procedure, isn't it?

**Mr Bromm:** And, in that respect, similar to the procedure under the Child and Family Services Act.

**Mr Kormos:** But it's very similar to a criminal procedure.

**Mr Bromm:** That is why there is the hearing requirement within 24 hours of the child's apprehension, because it is contemplated that the nature of the intervention necessitates not stopping to give notice to the child.

**Mr Kormos:** You mentioned the Child and Family Services Act, and I'm inclined to agree, except for the fact that the Child and Family Services Act doesn't concern itself with children 16 and over.

**Mr Bromm:** Correct, unless they are the subject of a previous order.

**Mr Kormos:** That's right, and this bill does.

**Mr Bromm:** Yes.

**Mr Kormos:** Again, around activity performed by a person that is, in and of itself, legal.

**Mr Bromm:** The activity legal? Yes, but again, the legislation is not aimed at defining illegality per se, but situations in which protection is warranted.

**Mr Kormos:** I guess I'm just concerned about the similarities between this and criminal process when you persist, not incorrectly, in indicating that this isn't criminal law. It can't be, because it's provincial, right?



**Mr Bromm:** Exactly.

**Mr Kormos:** It would be impossible for this to be criminal law because it's provincial.

**Mr Bromm:** Exactly.

**Mr Kormos:** And if it is criminal law, it's ultra vires.

**Mr Tilson:** There you go.

**Mr Kormos:** Am I right on that?

**Mr Bromm:** Yes. Well, there's a risk it could be declared ultra vires. The court would have to be involved in that process. I wouldn't declare it so myself.

**Mr Kormos:** Just don't send the Attorney General himself to argue it. That's my only caveat.

Holy moly, we've got another notice of motion for a time allocation here on Bill 30. Oh, for Pete's sake. So now they're going to ram that through.

**Mr Tilson:** But we're talking about Bill 86.

**Mr Kormos:** Yes, I know. OK.

**The Acting Chair (Mr Carl DeFaria):** Is the committee ready to vote?

**Mr Kormos:** No. I'm addressing section 4. I'm very concerned about the parallels between this and criminal legislation and criminal procedure. I understand your explanation that it also has a similarity, a parallel in the Child and Family Services Act, but I say once again that the Child and Family Services Act, we agree, doesn't provide for involuntary detention.

**Mr Bromm:** But it does provide for removing someone from a situation involuntarily.

**Mr Kormos:** Yes.

**Mr Bromm:** What subsequently happens to them—

**Mr Kormos:** When they're a child in need of protection.

**Mr Bromm:** Yes.

**Mr Kormos:** But you've made it quite clear—and I was very impressed with your explanation of how the bill before us is very distinguishable from the Child and Family Services Act, because this bill provides for involuntary detention, which you said the Child and Family Services Act specifically does not.

**Mr Bromm:** Right.

**Mr Kormos:** I find the scales sort of tipping here, because when you combine that with a criminal-style process, with criminal-style consequences—I guess they're not consequences, unless being held in lock-up pending your release is a consequence—it causes me great concern.

Chair, you'll take a look at subsection (2). First of all, without the regulations, without the utilization of regulatory power to prescribe the type of evidence that is necessary, a justice merely needs an information sworn by the police officer or the worker. We're familiar, and Mr Bromm is familiar, with the types of informations that are sworn. These are based simply on the declaration that I swear that I have, I suppose in this case, reason to believe or reasonable belief that so-and-so is engaged in so-and-so. Bingo.

Other intrusive procedures like, for instance, a wiretap warrant, if I'm not misinterpreting—and, Mr Tilson, help me if I get this wrong; it's been many years. Because it is

such a significant intrusion into privacy—it used to be section 176 of the Criminal Code; it's probably changed now, the wiretap provisions—a judge would require some pretty thorough evidence before issuing a wiretap. We're not talking about lock-ups here; we're just talking about listening in on their phone calls, because the person is suspected of committing a crime, usually a serious one: a conspiracy to traffic in drugs, a conspiracy to commit murder, organized crime activities, among other things.

It's of concern that if the regulations never happen or if they are as sparse as the section is, the legislation here permits that a mere information is going to be enough to put a young person—12, 13, 14, 15, 16, 17 years old; 17 years, 11 months and 20 days, right?—in a locked facility when that person hasn't committed a crime, and it can be done on a mere say-so. That should be of some concern. One would certainly hope that the legislation had provided for some standard of evidence to be provided.

Granted, perhaps it could be done by way of affidavit, as are most search warrant applications. They're done by way of affidavit. That affidavit is subsequently scrutinized by defence lawyers and crown attorneys to determine the validity of the wiretap or search warrant, because if there wasn't sufficient evidence to give the justice, the judge, jurisdiction to issue that search warrant, to issue that wiretap warrant, it's ruled inadmissible.

This is a pretty darned low standard of proof to subject a person to what, in effect, in many respects, amounts to the same treatment as would be accorded a person charged with a criminal offence. Mr Bromm is being very clear with us, as is Mr Tilson, that this bill does not criminalize any of the activities that are enlisted or contemplated by section 1. It says we're to trust the prospect of regulations "or on the basis of such other evidence as may be prescribed by the regulations."

I find that very disquieting. I would have expected that in the drafting of this bill, especially in view of the fact that the bill had existed in three previous incarnations, in terms of Mr Bartolucci's sponsorship of it, the government would have contemplated that. This is not investigative legislation in terms of testing the waters. The bill has been before committees at least once. I know Marion Boyd sat through the bill on committees. I wasn't there. I apologize, I wasn't dealing with the bill in its previous incarnations, but I am dealing with it now. I find it just incredible.

**Mr Tilson:** Mr Chairman, perhaps Mr Kormos should look at section 9, which talks about a show-cause hearing within 24 hours. I don't know whether that satisfies him or not; I expect it doesn't. It's not as if the police or children's aid workers are going out and simply picking kids up off the street. They have to have a hearing within 24 hours.

1730

**Mr Kormos:** That's exactly why I use the pre-release order stage of a criminal process. I understand that. That's what I'm asking about. I'm using the pre-release

stage where a person is held in custody. We've made it quite clear that this bill is all about involuntary detention.

The reason the bill is all about involuntary detention, as well as people 16 and 17 years old, is because the Child and Family Services Act isn't. Nobody's repealing the Child and Family Services Act or the capacity of workers, police or other authorities to pick up a kid as a "child in need of protection" under that legislation. This bill is all about involuntary detention and 16- and 17-year-olds.

Let's cut to the chase here. I am very concerned about the telephone warrant. We've canvassed. I'm not a fan of telephone warrants, but I understand that in remote jurisdictions, for instance, because of the shortage of justices of the peace—and the parliamentary assistant knows. I've referred often enough to travelling through communities like Peawanuck and Attawapiskat, amongst others, and communities that have one-person police forces and no JPs, communities that have police forces and no lockups. There's no place to detain people. I've talked to the police officers from native policing services in those communities and the difficulties they have without access to JPs. It is the lack of standard that's required to acquire what is in effect an arrest warrant—I'm sorry; you can call it by other names as much as you want, but that's what it is tantamount to—and an incredible intrusion because you're locking up the person who isn't charged or suspected of committing a crime.

This is what I want to emphasize, what I want to get back to and that, as we go on, we will see has little redress, in my view, in the event of a wrongful prosecution, because after all it is not a prosecution. A person has some redress at least in the instance where they're maliciously prosecuted. Again, I'm not suggesting that maliciousness should be the focus of our attention here, but I'm certainly suggesting overzealousness and an interest on the part of a community to clean up its streets.

Look, drive up Yonge Street, starting down around where Sam's is or even farther south. You'd have to be from Mars not to get a feeling about some of the stuff that's going on on Yonge Street as you drive up the strip there on your way to Bloor. Is this about cleaning up the street? If it is only about that, it doesn't deal with any of the problems that are behind the sometimes disturbing images we get on Yonge Street. I notice that peddling drugs, amongst other things, is not one of the items enumerated in section 1. I also notice that section 1 is so focused on sexual activities or sexually-related activities that a judge, in regarding that list as not exhaustive, is nonetheless going to conclude—and Dreiger on statutes knows the Latin for it. Do you know the Latin for it? Can you help me with that? Where you interpret what's being defined by the nature or tone of the list that's provided, notwithstanding that the list isn't exhaustive?

**Mr Bromm:** Expressio unius est exclusio alterius or something like that?

**Mr Kormos:** I think so. That's the problem. I have real concerns. I will not be supporting section 4 because of the lack of standards for obtaining a warrant for the

apprehension of a person. I believe that when you're taking somebody into custody the standard for determining that should be very high, especially when that can be—and this is where it is different from the Child and Family Services Act—an involuntary detention, almost inevitably in a jail cell—that's what we are getting down to—and, unlike the criminal law, when you are not arguing that the person has committed a criminal offence and is ergo, de facto, dangerous to other people in the community. You keep saying, "No, we are not criminalizing this activity. We are not saying it is wrong. We are saying these people are victims." I oppose section 4 for those reasons.

**The Chair:** Is there any further discussion on section 4? Are the members ready to vote?

**Mr Tilson:** Section 4, as amended, Mr Chairman.

**The Chair:** Are the members ready to vote? All those in favour of section 4 with the amendment? And those opposed? I declare section 4, as amended, carried.

Section 5: I see no amendments. Is there any discussion with respect to section 5?

**Mr Kormos:** You've been very patient with all of us, Mr Bromm, but I suppose especially with me. Can you describe circumstances that were considered when section 5, apprehension without warrant, arrest without warrant—I think I know the circumstances under which you can arrest without warrant in the Criminal Code. What are you contemplating here? Give us perhaps one or two examples when you have this arrest without warrant of a child in section 5.

**Mr Bromm:** The only examples I can provide would be those that were given to us by the police when we consulted with them on the bill. There were basically two scenarios. One scenario is when the police are aware of a certain individual. For example, in Toronto there is a unit that deals specifically with street youth and children involved in prostitution. They become very aware of who these kids are. They know that there's a child who requires intervention but they do not see the child often. If a circumstance arises where they come across that child, if they have to stop and obtain a warrant, then the ability to pick up that child is going to be extremely limited because of the fact that they do not come across that child on many occasions.

The second circumstance is of course the circumstance in which they're perhaps conducting an investigation for other activity and they come across a child. For example, they may go to an escort service or an adult entertainment facility with completely other intentions in mind and they happen to find a child in that location. Again, if they have to stop and obtain a warrant, then they limit their ability to pick up the child in those circumstances.

**Mr Kormos:** It is interesting that you described the two scenarios described by the police, because the qualification here says "that it is impracticable in the circumstances to obtain a warrant ... before apprehending the individual." That seems to me to be the thrust of it because you've got "and" combining the two sections. We know, for instance, that the subject matter of the warrant



doesn't have to be known by name, right, because the previous section deals with that? It is not a matter of being able to ascertain identity. It doesn't say it would be difficult to exercise the warrant or impracticable to exercise the warrant. That's the scenario you're talking about, right, where you only see this person rather infrequently? That's a scenario where it would be difficult or impracticable to exercise a warrant, isn't it?

**Mr Bromm:** The section contemplates that the two in that circumstance are actually the same situation, where obtaining and exercising the warrant, because they are usually very time-limited, would become the same thing because they cannot obtain a general warrant with a long life to pick up a particular individual. So they can't stop and go back and get that warrant if there's a flight risk.

**Mr Kormos:** "It is impracticable in the circumstances to obtain a warrant under section 4 before apprehending the individual."

**Mr Bromm:** That particular wording in that circumstance is something that has already been defined by the Supreme Court of Canada.

**Mr Kormos:** Help me because I'm aware of the breathalyser tests as soon as practicable.

**Mr Bromm:** This is in relation specifically to child apprehension proceedings. What the Supreme Court has held is basically that the test is impracticality, that if you're dealing with a child in need of protection, all you need to establish is that it is impractical to obtain a warrant before you're able to pick up that child without a warrant. The court has held that that's all the standard that you need to meet in child protection proceedings, because of the risk inherent in it with a child in those situations.

1740

**Mr Kormos:** OK. I appreciate that. I don't expect you to have—I'm not being facetious. Maybe you could get the citation to me in the morning, if it's not impracticable for you to do that. I'd appreciate it because that resolves that problem for me and my concern about it.

I appreciate the direction given by Mr Bromm in this regard, and I do want to look at the case, because if that's the answer to the question, then I accept that. Then the section becomes less inherently contradictory than it would appear otherwise. But once again, I think we're talking about a child here, which means a 16- or 17-year old—a 17-year-old plus 11 months plus 29 days. You're talking about a young person who literally one day is exploited and needs protection, to wit, by being taken into custody, but the next day is no longer sexually exploited because they've just had their 18th birthday. You've got to understand. You may or may not have heard my comments on second reading during the debate, but I just find this whole approach to be wacky. I do. I find the approach to be one of street cleaning and street sweeping and feel-good.

Let me make something perfectly clear, and I know that Mr Bartolucci, for instance, has been very articulate in presenting real-life scenarios, real-life cases. I don't think there are any of us—if there are, we've been

blessed—who, in our own families or in the family of friends or, as MPPs, in the family of constituents or, as lawyers, in clients' families, haven't seen the incredible pain of a family whose kid at the very least, from their perspective, gets derailed, gets caught up in the drug world, gets caught up in the sex trade—and worse. Again, to say it can't happen to any family is naive because it can happen to any family. It isn't an indicator of how well parents take care of a kid, how much they love a kid. Families are dealing with some strong competing interests out there and the subcultures that accommodate the activities referred to here, along with other stuff, along with drug use—dangerous drug use. I'm not talking about kids experimenting with pot, I'm talking about dangerous underworld drug use where kids—and adults—are getting hooked, getting sucked in, and where the sex trade becomes one of the options.

To imply that every prostitute is a drug addict is naive, of course, but to suggest that there's no relationship between the two is equally naive and absurd, because what would motivate young people? Clearly we're talking about issues of homelessness, we're talking about, yes, the criminalization of squeegeeing. There are people, Mr Bryant and myself among others, who have suggested that criminalization of squeegeeing could well serve the function of driving young homeless people into the drug trade, into the sex trade, into the theft trade, if you will, the stolen-car-radio trade, the smash-and-grab jewellery-store-window trade.

But this just seems to me to be, at first blush, the response that appeals to, let's say, yes, families who feel that the system didn't give them a capacity to intervene in a child's life when that child had gone off-rail, from that family's point of view. But I also say it's an approach—and we'll get into this as the bill progresses and when we talk about the maximum periods of time for which a person contemplated by this act can be held in these custodial settings. I'm incredibly concerned about the failure of the government to design even a model for the places, the space, in which a young person apprehended under this bill will be kept even during the preliminary processing, not even the guarantee that it's going to be isolated from criminal facilities.

I put to you that at the end of the day—look, police work within police cultures. Police are not social workers. There are a whole lot of cops who do policing with a social work bent, but at the end of the day they're not social workers. They work out of police stations with lockups, they carry guns and batons, along with other tools of the trade, as they should. I suggest to you that the vast majority of the so-called apprehensions, especially the warrantless ones, are going to be done by police officers, because it's cops who are out there on the street witnessing what's going on, which will give them reasonable grounds to believe. The majority of apprehensions, especially the warrantless ones, are going to be done by police officers. Police officers work within a policing culture, within a policing milieu. Police officers, when they take somebody into their police car, put them



in the locked-up backseat of the police car with the door handles that don't work. When they're waiting to take that person before a justice, a JP, they lock them up in cells. That's what police do. That's what policing is about. The policing perspective is one of detecting criminal behaviour.

I understand the care that appears to have been put into section 1, but my position is that it becomes clearer and clearer as we progress through this bill section by section that we're talking about putting young people, who may well be victims, into a literal physical context where they're being treated as criminals. I resent that and I also say that's not the answer. I leave it at that.

**The Chair:** Does that conclude—

**Mr Tilson:** Yes. I think we're ready to vote on section 5, Mr Chair.

**The Chair:** Shall section 5 carry? All those in favour? And those opposed? I declare section 5 carried.

With respect to section 6, we have a Liberal motion, on page 3. I ask for that motion.

**Mr Bartolucci:** I move that section 6 of the bill be amended by striking out "six months" and substituting it with "24 months."

**The Chair:** Is there any comment on that, Mr Bartolucci?

**Mr Bartolucci:** We've spent considerable time debating the merits of the bill. The bill that I put forth the first time envisioned two things: (1) protecting these children who are victims and (2) ensuring that offences are treated severely enough to warrant serious consideration before one chooses to violate the rights of a child to a healthy upbringing. So I would suggest that the government's mandate of six months isn't severe enough and would ask for 24 months.

**Mr Kormos:** I want to ask Mr Bromm, because the six months—for instance, this morning I was reading section 112 of the Municipal Elections Act, which talked about the offence of voting when you're not entitled to. The penalty, of course—it's corrupt practices, which I thought was interesting—is a maximum fine of \$5,000 or six months in jail. I just happened to be looking up that section of the Municipal Elections Act this morning.

**Mr Carl DeFaria (Mississauga East):** Is the reason for that because of summary offences?

**Mr Kormos:** I was reading—

**Mr DeFaria:** But isn't it a maximum of six months?

**Mr Kormos:** Yes, that's what I want to get to, because there is the pattern of six months. Is there something to that in terms of provincial offences and can you help us with that? Is there something to the six-month number, which is what Mr DeFaria I think is getting to?

**Mr Bromm:** There isn't a six-month limitation, for example, on provincial offences. As you probably know from other provisions in the statute that provide for certain offences such as violating a court order, the potential imprisonment period is longer. I wouldn't even pretend to be able to make sense of the myriad of provincial offences and the different imprisonment periods that they provide for. The only thing I can say is

that in this particular section it was set out based on what the reasonable assumption was that the court would impose if someone were convicted under this particular section. But it wasn't based on guidance from the court in terms of how long you can impose or anything like that.

**Mr Kormos:** Because Mr Bartolucci is suggesting pen time, right, which starts at 24 months, which may not be what he intends, because 24 months in a federal institution—you'll serve a lot less time than two years less a day in a provincial institution.

**Mr DeFaria:** If I may, Mr Bromm, under the summary offences act—because you'd have to proceed basically as a summary offence?

**Mr Bromm:** Yes.

**Mr DeFaria:** Is there a limit of six months in prison under that act?

**Mr Bromm:** I can check that out but I'm not aware—

**Mr DeFaria:** I think that's probably why most of these offences are six months, unless you can get them out of the summary offences act.

**Mr Kormos:** I'd love to learn whether that's the case or not. Part of my suspicion was always that should there be a custodial penalty that is too high, you then blur the distinction between criminal offences versus provincial offences. As I understand it, one of the qualities of criminal offences, although not exclusively for criminal offences, as compared to regulatory offences is of course the loss of liberty. But that's just mere meandering on my part. Maybe this should be held down until tomorrow.

**Mr Tilson:** Mr Chairman, just to muddy it a little bit—I don't know whether I've spoken to Mr Bryant—the government is prepared to partially agree with this, only we're suggesting 12 months as opposed to 24 months. If Mr Bartolucci agrees to that, then I won't have to do anything. If he doesn't agree to that, I'd like to know the procedure. I guess we defeat his and I make another amendment.

**Mr Bartolucci:** Mr Chair, I would move an amendment to this motion, that it read, instead of "six months," "12 months," rather than "24 months." Is that in order?

**The Chair:** Yes. We can draft a new amendment, essentially.

**Mr Tilson:** I believe there's something that's filed with the clerk.

**Mr Bromm:** No, it hasn't been.

**Mr Tilson:** It hasn't been filed. Well, there you go.

**Mr Bartolucci:** It's a lot easier if we just simply amend this motion.

**Mr Tilson:** It seems to me Mr Bartolucci is withdrawing his amendment and proposing one that reads, "I move that section 6 of the bill be amended by striking out 'six months' and substituting '12 months.'"

**Mr Bartolucci:** That's what I said.

**Mr Tilson:** Yes. The government would agree with that.

**The Chair:** The clerk advises me that we just have to be clear whether we are withdrawing this amendment and substituting a new one or just amending this amendment.



**Mr Bartolucci:** I would suggest whatever is easiest for the clerk and the committee. It amounts to the same thing. So I would simply state that I withdraw the motion and move that section 6 of the bill be amended by striking out "six months" and substituting "12 months."

**Mr Kormos:** If I may, Chair, the bells are ringing. We've got to get into the House to vote. I'd suggest that

takes us over into tomorrow, and that means the amendment can be cleaned up and presented.

**The Chair:** Is that amenable to everybody? The committee is adjourned.

*The committee adjourned at 1753.*





## **CONTENTS**

Monday 10 December 2001

**Rescuing Children from Sexual Exploitation Act, 2001, Bill 86, *Mr Young* / *Loi de 2001*  
sur la délivrance des enfants de l'exploitation sexuelle, projet de loi 86, *M. Young*..... J-693**

### **STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY**

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Mr Rick Bartolucci (Sudbury L)

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Mr David Tilson (Dufferin-Peel-Wellington-Grey PC)

#### **Also taking part / Autres participants et participantes**

Mr William Bromm, Ministry of the Attorney General

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Ms Catherine MacNaughton, legislative counsel

CA2 ON  
XC 14  
-577



J-32

J-32

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 11 December 2001

# Journal des débats (Hansard)

Mardi 11 décembre 2001

**Standing committee on  
justice and social policy**

**Comité permanent de la  
justice et des affaires sociales**

Rescuing Children from Sexual  
Exploitation Act, 2001

Loi de 2001  
sur la délivrance des enfants  
de l'exploitation sexuelle



Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Tuesday 11 December 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Mardi 11 décembre 2001

*The committee met at 1546 in committee room 1.*RESCUING CHILDREN FROM SEXUAL  
EXPLOITATION ACT, 2001

LOI DE 2001

SUR LA DÉLIVRANCE DES ENFANTS  
DE L'EXPLOITATION SEXUELLE

Consideration of Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act / Projet de loi 86, Loi visant à délivrer les enfants prisonniers de la prostitution et d'autres formes d'exploitation sexuelle et modifiant le Code de la route.

**The Chair (Mr Toby Barrett):** Welcome everyone to this regular meeting of the standing committee on justice and social policy for December 11, 2001. I have an agenda before me.

**Mr Peter Kormos (Niagara Centre):** On a point of order, Mr Chair: The agenda is one that indicates that the subject matter of this afternoon's committee meeting is to be Bill 86. I put to you that in the House, at Orders of the Day, the government has called motion number 110, which is a time allocation motion, a procedural motion around Bill 30, which is an Attorney-General-sponsored bill dealing with justice matters. Standing order 69(d) prohibits this committee from hearing a similar policy matter while one is being considered in the House. I put to you that this committee is out of order, at least in terms of consideration of Bill 86 this afternoon.

**The Chair:** Further to that, I'll briefly read the standing order: "No bill shall be considered in any standing or select committee while any matter, including a procedural motion, relating to the same policy field is being considered in the House."

I'm open for suggestions.

**Mr Kormos:** I move adjournment of the committee.

**Mr David Tilson (Dufferin-Peel-Wellington-Grey):** Mr Chairman, on the topic of Mr Kormos's point of order, I think we all agree that both Bill 30 and Bill 86 are important bills. Bill 30 and its predecessor have been around for some time. Bill 86 has been around for some time. Mr Bartolucci had a private member's bill that was similar and I think it had some hearings around the province. I understand Mr Kormos is quite right in his point of order. You can't deal with two matters at the same time, and obviously the reasons were given by the re-

spective House leaders, that the critics and the parliamentary assistant can't be in two places at the same time. I understand that. However, the problem we have is that Bill 86 was set for yesterday and today's dates, which are the regular sittings of this committee. We can't, for example, ask that this matter be dealt with tomorrow or Thursday because they're not the days that are regularly scheduled for this committee. There's some standing order that says that.

So what I'm asking is for unanimous consent of the committee that the Liberal representatives, the NDP representatives and the Conservative representative approach our respective House leaders to ask that there be a consent resolution in the House that Bill 86 be continued on for the extra day that we had originally scheduled, which was today, at a time that would be agreed upon by the three House leaders.

**The Chair:** Before I deal with that issue, I go back to the motion that's before the committee, a motion to adjourn. I will put the question with respect to the motion from Mr Kormos to adjourn. All those in favour?

**Mrs Tina R. Molinari (Thornhill):** Point of order.

**Mr Kormos:** We're in the middle of a vote, Tina.

**The Chair:** All those in favour? Those against, raise your hands. That motion to adjourn is defeated.

Second, we have a request for unanimous consent from Mr Tilson.

*Interjection.*

**The Chair:** Oh, I see. I'm advised that unanimous consent is not required for members to go and consult with their House leaders. Is it the pleasure of the committee that we have a recess?

**Mr Tilson:** I'd like some indication from the other members of the committee as to whether they're prepared to go to their House leaders. Of course, we happen to have the NDP House leader staring at me right now. I would hope that he, as one, would agree that this matter be dealt with outside the regular scheduled days.

**Mr Kormos:** As a matter of fact, I do agree. I propose we come back January 14. The House can resume setting after a healthy Christmas holiday season and New Year's break and we can start dealing once again with this bill and a whole lot of other ones that have been stacked up by this government.

**Mr Tilson:** There you go, Mr Chairman. I guess I have my answer. Thank you very much. I would move adjournment of the committee.



**The Chair:** I'll put the question with respect to adjournment. I'm going to ask those who are in favour and those who are against. Those in favour of adjournment?

Anyone against? I see none against. This committee is adjourned.

*The committee adjourned at 1552.*











## CONTENTS

Tuesday 11 December 2001

<b>Rescuing Children from Sexual Exploitation Act, 2001, Bill 86, Mr Young /</b> <b>Loi de 2001 sur la délivrance des enfants de l'exploitation sexuelle,</b> projet de loi 86, M. Young .....	J-709
--	-------

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Mr David Tilson (Dufferin-Peel-Wellington-Grey PC)

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Ms Catherine MacNaughton, legislative counsel

A2 ON  
XC14  
-577  
)

Document  
Produit



J-33

J-33

ISSN 1488-9080

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 13 December 2001

# Journal des débats (Hansard)

Jeudi 13 décembre 2001

**Standing committee on  
justice and social policy**

**Comité permanent de la  
justice et des affaires sociales**

South Asian Heritage Act, 2001

Loi de 2001 sur l'héritage  
sud-asiatique

Health Protection and Promotion  
Amendment Act, 2001

Loi de 2001 modifiant la Loi  
sur la protection et la promotion  
de la santé



Chair: Toby Barrett  
Clerk: Tom Prins

Président : Toby Barrett  
Greffier : Tom Prins



### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
JUSTICE AND SOCIAL POLICY

Thursday 13 December 2001

*The committee met at 1009 in committee room 2.*

**The Vice-Chair (Mr Carl DeFaria):** I'd like to call the committee to order. I'll just read the motion that was passed with unanimous consent.

**Ms Marilyn Mushinski (Scarborough Centre):** Could you ask for silence from the audience, Mr Chairman, so that we can hear you?

**The Vice-Chair:** I beg your pardon?

**Interjection:** Exactly.

**The Vice-Chair:** Thank you.

The order, with unanimous consent on a motion by Mrs Ecker, reads:

"That third reading of Bill 105, An Act to amend the Health Protection and Promotion Act to require the taking of blood samples to protect victims of crime, emergency service workers, good Samaritans and other persons, be discharged and the bill be recommitted to the standing committee on justice and social policy for clause-by-clause consideration on Thursday, December 13, 2001, from 10 am to 12 noon;

"That the committee will report the bill to the House on Thursday, December 13, 2001, and at such time the bill will be ordered for third reading; and

"That when the order for third reading is called, the Speaker shall put the question immediately on third reading without further debate or amendment and without any deferral of the vote."

The second part of this order, with unanimous consent on a motion by Mrs Ecker, reads:

"That the standing committee on justice and social policy shall be authorized to meet from 10 am to 12 noon on Thursday, December 13, 2001, for clause-by-clause consideration of Bill 98, An Act to proclaim May as South Asian Heritage Month and May 5 as South Asian Arrival Day;

"That the committee will report the bill to the House on Thursday, December 13, 2001, and at such time the bill will be ordered for third reading; and

"That when the order for third reading is called, the Speaker shall put the question immediately on third reading without further debate or amendment and without any deferral of the vote."

Is it the pleasure of the committee that we deal with Mr Gill's bill first? Agreed.

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE  
ET DES AFFAIRES SOCIALES

Jeudi 13 décembre 2001

## SOUTH ASIAN HERITAGE ACT, 2001

LOI DE 2001 SUR L'HÉRITAGE  
SUD-ASIATIQUE

Consideration of Bill 98, An Act to proclaim May as South Asian Heritage Month and May 5 as South Asian Arrival Day / Projet de loi 98, Loi proclamant le mois de mai Mois de l'héritage sud-asiatique et le 5 mai Jour de l'arrivée des Sud-Asiatiques.

**The Vice-Chair:** If I may, I will start then—

**Mr Peter Kormos (Niagara Centre):** There's a motion by Mr Wood moving an amendment to the preamble.

**The Vice-Chair:** We have to start with section 1, and when we get to the preamble—

**Mr Kormos:** No, we have to deal with the preamble. That comes before section 1.

**The Vice-Chair:** The clerk has just indicated that in clause-by-clause we have to go through the sections first and then deal with the preamble at the end.

Are there any comments, questions or amendments to section 1? Seeing none, shall section 1 carry? Carried.

Section 2.

**Mr Kormos:** Sections 2, 3 and 4 together, please?

**The Vice-Chair:** All right. Shall sections 2, 3 and 4 carry? Carried.

**Mr Kormos:** Mr Wood, please.

**Mr Bob Wood (London West):** I'm getting support today.

**The Vice-Chair:** We're dealing now with the preamble. Are there any amendments?

**Mr Bob Wood:** There are. I move that the second paragraph of the preamble to the bill be amended by striking out "Maritius" and substituting "Mauritius, Singapore, Malaysia."

I might indicate that I have a second amendment as well, which I presume you'd want to deal with after you've dealt with the first amendment.

**The Vice-Chair:** Go ahead and read the second amendment.

*Interjection.*

**Mr Bob Wood:** I think it's correct.

**Ms Mushinski:** It says "striking out 'Maritius' and substituting"—



**Mr Bob Wood:** I'm sorry. The amended spelling of Mauritius is correct. I think the unamended spelling leaves something to be desired.

**The Vice-Chair:** Go ahead and read the second amendment.

**Mr Bob Wood:** OK.

**Mr Kormos:** Carried.

**Mr Bob Wood:** We've got a lot of latitude here.

I move that the third paragraph of the preamble to the bill be amended by striking out "South Asian immigrants" and substituting "South Asians."

**The Vice-Chair:** Are there any further amendments?

**Mr Kormos:** Debate on this amendment before we—

**The Vice-Chair:** First of all, these amendments are out of order, and I'll be asking for unanimous consent to deal with them. Is there unanimous consent? Agreed.

**Mr Kormos:** Debate?

**The Vice-Chair:** Go ahead, Mr Kormos.

**Mr Kormos:** I'm pleased to support the amendment. Mr Gill was very co-operative during the course of presenting this bill and certainly had the co-operation of the New Democratic Party. I'm grateful to Gurpreet Sodhi for drawing to my attention and to Mr Gill's attention that the inclusion of the word "immigrants" as compared to the broader reference to "South Asians" would exclude people like Ms Sodhi, who is South Asian Canadian but who was born here and who is not an immigrant in her own right. Mr Gill again responded positively to that observation. This truly makes this bill an inclusive one that considers the historical role of South Asians as immigrants, but also the role of their children, their grandchildren and their great-grandchildren, the South Asian community being a myriad in itself of cultures, ethnicities and religions, but having a sense of community and certainly a significant role in Canadian history and the Canadian present.

**The Vice-Chair:** Any other comments?

**Mr Bob Wood:** I might add that I agree with what Mr Kormos has said, and I think the intention of these changes is to be more inclusive, thereby demonstrating in a stronger way the very positive contributions South Asians make and have made to this province. It's intended to strengthen and demonstrate even more strongly the contribution that is being made and has been made to the province.

**The Vice-Chair:** If there are no further comments, shall the first amendment carry? Carried.

Shall the second amendment carry? Carried.

Shall the preamble, as amended, carry? Carried.

Shall the long title carry? Carried.

Shall Bill 98, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

We have now completed Bill 98.

## HEALTH PROTECTION AND PROMOTION AMENDMENT ACT, 2001

### LOI DE 2001 MODIFIANT LA LOI SUR LA PROTECTION ET LA PROMOTION DE LA SANTÉ

Consideration of Bill 105, An Act to amend the Health Protection and Promotion Act to require the taking of blood samples to protect victims of crime, emergency service workers, good Samaritans and other persons /  
Projet de loi 105, Loi modifiant la Loi sur la protection et la promotion de la santé pour exiger le prélèvement d'échantillons de sang afin de protéger les victimes d'actes criminels, les travailleurs des services d'urgence, les bons samaritains et d'autres personnes.

**The Vice-Chair:** We're dealing now with Bill 105. Are there any comments, question or amendments to any sections of the bill, and if so, to which sections?

**Mr Garfield Dunlop (Simcoe North):** There are seven different amendments. That follows up on two previous amendments made by Mr Bryant and Mrs McLeod at the previous justice and social policy committee. I'd like to make a few other comments, if I could. Shall I do it now or later?

**The Vice-Chair:** Go ahead, Mr Dunlop.

**Mr Dunlop:** Members of the committee, I want to take this opportunity to thank the committee members, Mr Levac, Mr Bryant, Mr Kormos and Mrs McLeod, as well as our own caucus members, and all three caucuses for their support on this bill.

It's been a very difficult process to go through a bill of this size as a private member. I think it's good legislation. I know it will take some time to implement this piece of legislation, but in the end I think it will be good for Ontario when we do have it proclaimed. I thank everyone for their input along the line.

I've got these amendments, and I think all three caucuses have looked at them. I'll be prepared to read them out as we get there.

**The Vice-Chair:** Do you want to move the first amendment?

**Mr Dave Levac (Brant):** Mr Chair, I'd like to make a couple of comments as well before we move on to the amendments. In the last week I have gained an understanding of the other side of politics in terms of the co-operation that's being spoken of today. I appreciate the fact that that's being pointed out today. I'm glad to hear it, because I was concerned at one time that some games were being played. My party has been told that they were the ones who were trying to ram it through, and the next thing we were told was that we were trying to block it.

1020

I want to make sure the record is perfectly clear that from the very beginning—in fact, I have indications and records and letters that prove we were looking at doing this before the bill showed up in the House. The Liberal Party being accused at one time of trying to ram it through, and having a group sent to the health critic saying, "Why are you trying to ram this bill through?"

and then the very next day other groups coming up to us and saying, "Why are you trying to block the bill?"—if those things were done by anyone, I would suggest to you that's not the way to get co-operation and not the way to get bills passed.

The second thing I would say is that holistically there were concerns raised by my House leader, who basically said that if we weren't able to get certain things done for the entire package that was offered in the House leaders' debates, then I would say to you that that couldn't be singled out as one particular bill. On the record, I was very adamant with Mr Dunlop in our conversations right from the introduction of the bill that he would receive my personal support and my efforts to ensure that the bill passed.

The other part of this that has now come about as a result of this is a clearer understanding of how the process works. So there are recommendations, as far as the process is concerned, that the government side needs to make sure that when they are either in support or not in support, the statements they make to some of the other stakeholders who are outside this group are clear. Some of them told me they were under the understanding that the government had made statements to the effect, "Don't worry about it. It's a private member's bill, and they seldom ever get passed." Because of that, and the tenacious efforts of Mr Dunlop to ensure that this bill did get passed, I appreciate very much, on behalf of those people who are concerned very deeply, that something like this needed to be passed.

Again, for a second time I would congratulate Mr Dunlop's tenacious attitude toward making sure this bill saw the light of day. Some of the things that were done were not above-board—what I would consider above-board—in order to get this bill passed. But the fact is, we're here today to say the bill is going to pass. The amendments that are being offered—and our health critic was able to guide us through those—and Mr Dunlop's taking this on the road and making sure that things that were pointed out in the first draft got corrected, and co-operatively working with the ministry and with the other parties, made sure this thing did get passed.

Having said that, I would say to you for the umpteenth time that we are definitely supporting this piece of legislation. The amendments address the concerns that were being raised by some people. Unfortunately, there are still those who will not like this piece of legislation because of concern about the confidentiality of medical records, but I believe that every effort was made that we finally have a draft of a bill that all of us can support in the intent of what is happening.

I want to congratulate the member, and I also want to indicate to those stakeholders that every effort was made by all three parties to ensure that the passage of this bill was done in a way that tried to protect—and I don't want to be presumptuous to speak on behalf of the NDP, but I understand there were efforts made to make sure this bill got passed.

Having said that, my colleague wants to say a couple of words.

**Mr Kormos:** Just to say that I don't suffer from performance anxiety.

**Ms Mushinski:** Just for the record, Mr Chairman, I want to say that in no way have I ever accused anyone of trying to ram this through and block it at the same time. I always attempt to do things above-board, although it's not always easy when others try to tread water, even though I would never sink to their level.

**The Vice-Chair:** Mr Dunlop, do you want to move the first amendment?

**Mr Dunlop:** I move that section 22.1 of the Health Protection and Promotion Act, as set out in section 1 of the bill, be amended by adding the following subsection:

"Order for blood samples, definition

"(0.1) In this section,

"physician report" means a report made by a physician who is informed in respect of matters related to occupational and environmental health and all protocols and standards of practice in respect of blood-borne pathogens, which report assesses the risk to the health of the applicant described in subsection (1) as a result of the applicant's having come into contact with a bodily substance of another person in the circumstances described in subclause (1)(a)(i), (ii) or (iii)."

**The Vice-Chair:** Mr Dunlop has moved government motion 1. Are there any comments? Seeing none, shall we—

**Mr Kormos:** Chair, perhaps there could be a brief explanation of the impact of this, if it's available.

**Mr Dunlop:** Basically, this is more of a definition, Mr Kormos. The reason is to define the physician report as a report made by a physician who is informed about occupational health and medical protocols relating to blood-borne pathogens.

**Mr Kormos:** As I understand it, Chair, this is again imposing a restriction on the types of doctors who can be called upon. It relies upon doctors who have specific experience and expertise, as indicated, not only with respect to occupational health issues but also the protocols around it relating to the physician's role primarily.

**Ms Mushinski:** It suggests there are some medical practitioners who actually don't have the knowledge of those protocols, and this makes sure that those who conduct the tests actually do.

**The Vice-Chair:** Any other comments? Shall government motion 1 carry? Carried.

Mr Dunlop, you have another motion on section 1?

**Mr Dunlop:** Yes. I move that subsection 22.1(1) of the Health Protection and Promotion Act, as set out in section 1 of the bill, be amended by striking out "and" at the end of clause (c) and by adding the following clauses:

"(e) the applicant submits to the medical officer of health a physician report on the applicant made within seven days after the applicant came into contact with the bodily substance; and

"(f) having regard to the physician report mentioned in clause (e), the order is necessary to decrease or eliminate



the risk to the health of the applicant as a result of the applicant's having come into contact with the bodily substance."

A brief explanation, Mr Chairman, is that clause (e) requires an applicant to submit a physician's report as part of the application process, and clause (f) requires the medical officer of health to consider the physician's report when considering whether on reasonable grounds the order to take a blood sample is necessary to decrease the risk to the health of the applicant.

**Mr Kormos:** What this section does is restrict access to the process. It makes sure that a person who is an applicant has to first undergo an initial physical examination and consultation with presumably their own doctor, and this again controls access, willy-nilly, to the process. In other words, it has to be considered by the medical officer of health in determining whether or not that medical officer of health is going to require samples in determining whether there is effectively a *prima facie* ground for concern on the part of the applicant. There may well be scenarios where an applicant has personal fear because they've come into contact with, let's say, bodily fluids but, after visiting their physician, can be assured that the nature of the contact was such that it won't require the intrusion by way of requesting a blood sample from the respondent party. Again, this narrows the process. It makes the funnelling significantly more severe than what it was in the original form of the bill.

**Mr Levac:** Garfield, there have been a few questions raised with the seven days. That is a maximum to ensure that there's no loss of time in which it's required to get these tests done. I defended it or explained it in terms of a maximum of seven days so there would be no interference in the time frame. As we know, medically, the sooner the better.

**Mr Dunlop:** Yes, the sooner the better, but a maximum of seven.

1030

**Ms Mushinski:** I just actually had a question of Mr Kormos, who is a lawyer. Is this clause (e)—

**Mr Kormos:** I haven't seen a fee yet this morning.

**Interjection:** Send a bill for this, Peter.

**Ms Mushinski:** Please don't see that as an insult. It's a question actually on the context of clause (e). When I first read this, I didn't understand what it meant because there are no commas, there's no grammatical context at all. If this was to be legally interpreted, would you understand it?

**Mr Kormos:** I think I understand it. Again, it severely restricts the scope of medical officers of health in ordering blood samples, because it requires the applicant to have undergone a physical examination and to have that report available for and provided to the medical officer of health who is being called upon to make a determination as to whether to require blood samples from the respondent.

**Ms Mushinski:** A good enough explanation for me, Mr Chairman.

**The Vice-Chair:** Do you wish legislative counsel to comment on it?

**Mr Kormos:** I'd like to hear his version.

**Mr Michael Wood:** I'd just like to support what Mr Kormos said in regard to the interpretation of the motion. The two clauses that are being added by the motion fall within subsection 22.1(1), so you have to read the introductory words of 22.1(1), which are saying that these clauses are conditions precedent to making an application to the medical officer of health for the order that's set out later in the section. These are additional conditions.

**Mr Kormos:** I should indicate further, Chair, that this amendment, among others, is a direct response to the concerns raised by the medical officer of health when he was here last week. They flow very much and address the concerns that he raised.

**Mr Bob Wood:** May I ask a question here? It says they can make a written order at the start of 22.1(1). Why would it not read "the applicant has submitted"? We're saying they can make a written order if they're satisfied that "the applicant submits." Either the applicant has or hasn't submitted. You can't be satisfied that they submit.

**Mr Michael Wood:** Could I answer that? I suppose it's theoretically possible that at the same time as the applicant goes to the physician for the physician report, the applicant starts to make the application. But in any event, I think it is clear from clause (e) what the timelines are.

**Mr Bob Wood:** Why would it not be "has submitted" rather than "submits"?

**Mr Michael Wood:** As I say, the applicant could submit the physician report at the same time as submitting the application.

**Mr Bob Wood:** Sure, but surely the submission has to be made before he can be satisfied or he or she makes the order.

**Mr Michael Wood:** Yes, it is true that the—

**Mr Bob Wood:** It can't be contemporaneous. The one's got to happen before the other.

**Mr Michael Wood:** The medical officer of health has to have the physician report before making the order.

**Mr Bob Wood:** That's my point. So why would it not be "has submitted" rather than "submits"?

**Mr Michael Wood:** Perhaps "has submitted" would be more accurate, but it's—

**Mr Bob Wood:** If you're satisfied with that, if a friendly amendment would be entertained, maybe it should read "has submitted." Because they're not contemporaneous. The submission has to happen before he or she can be satisfied.

**Mr Michael Wood:** You are right that the medical officer of health cannot make the order until the applicant has submitted the physician report and the application.

**Mr Bob Wood:** Would you be satisfied to change "submit" to "has submitted"?

**Mr Michael Wood:** Yes, I would personally, but—

**Mr Kormos:** I understand that's the lawyer part of Mr Wood coming into play, but from a linguistic point of view, I just put this to you—and I don't quarrel with

what you say, because I submit that “submits” in effect means “has submitted” in the context of this bill. “Submits” sounds better linguistically, but then when have lawyers ever cared about—other than it’s bluebell time in Kent—the rhyme or rhythm?

**Mr Bob Wood:** You would agree that they’re not contemporaneous. The submission has to happen before the—

**Mr Kormos:** Yes, I’m not quarrelling with you.

**Mr Bob Wood:** I would suggest “has submitted” is better than “submits.”

**Mr Kormos:** I’m not quarrelling with you.

**Mr Bob Wood:** I don’t want to take up the morning.

**Mr Kormos:** And legislative counsel agrees that “submits” is intended to say “has submitted” in any event. That’s how I interpret it. So, God bless, let’s do that.

**Mr Bob Wood:** All right. If counsel is satisfied with “has submitted” and the committee is prepared to unanimously agree to that change, I will suggest it. If Mr Dunlop accepts it—

**Mr Dunlop:** I accept that, yes.

**Mr Kormos:** Agreed.

**Mr Levac:** We’re agreeing? That’s fine, go ahead. I have another example of the wording as in the body of the bill itself so it makes sense to match it.

**Mr Kormos:** The amendment to the amendment is clearly friendly and it’s also passed and been agreed to.

**The Vice-Chair:** Mr Wood, do you want to move the amendment, then?

**Mr Bob Wood:** I move an amendment, I guess, to the amendment—which, if I have unanimous consent, I gather can be accepted—that we remove “submits” in clause (e) and change it to “has submitted.”

**Mr Kormos:** Agreed.

**Mr Dunlop:** Agreed.

**Mr Bob Wood:** You’re satisfied with that?

**Mr Michael Wood:** Yes.

**The Vice-Chair:** Carried.

**Mr Levac:** Mr Chair, on the amendment, for clarification purposes: when it says “a physician,” does it necessarily mean a personal family doctor or “a” physician, which could include the emergency doctor dealing with the case immediately?

**Mr Kormos:** The physician report refers back to the earlier amendment.

**Mr Michael Wood:** Yes. As Mr Kormos just said, the physician report is defined in the section, but also the term “physician” is defined in the Health Protection and Promotion Act to be a legally authorized medical practitioner of health.

**Mr Levac:** So that is a broad stroke of who can initiate the report.

**Mr Michael Wood:** Well, “a physician” is a large category, a legally authorized medical practitioner, but the physician who makes the physician report has to be a physician who, at the time of making the report, is informed of the matters that are set out in the definition.

**Mr Levac:** So, for the purposes—and I have to put this out there—of an emergency worker or a good Samaritan who has to go to an emergency room, the physician at that time could make the report to expedite the process that’s necessary for treatment in the event of getting any one of these diseases spoken of.

**Mr Michael Wood:** It would be a matter of interpretation. A physician, a legally authorized medical practitioner, could make the report, but when the applicant makes the application, the medical officer of health would look at the report—

**Mr Levac:** And make a determination, sure.

**Mr Michael Wood:** —and have to satisfy himself or herself that the physician was informed at the time of making the report.

**Mr Levac:** That’s understood, but what I’m getting at is how quickly you can start the first phase, and that’s the idea, right?

**Mr Kormos:** Chair, if I may, there are no two ways about it: these amendments are not opening the doors, they’re narrowing access, and I think everybody understands that. Let’s understand that. That may not make some people happy, but in an effort to balance the issues—the matter of collecting a blood sample from a respondent is a serious intrusion on that party, I put it, far less serious when it’s the result of being a victim of crime, where for instance an alleged rapist is caught. It doesn’t particularly offend me to call upon an alleged rapist to provide bodily samples. These amendments restrict access, which again doesn’t make everybody happy, I understand that, but in an effort to balance the interests of a number of parties here, I put it to you that these are healthy amendments.

Please, look at the next amendment, though, because you’ve got the definition of “physician report.” The next amendment is critical as well, so these have to be looked at in context. I’m talking about the addition of subsection (1.1), the number of things that a reporting physician—that is, the author of a physician report—may require of an applicant in the process of preparing that report.

**Mr Levac:** I appreciate that.

**The Vice-Chair:** If there are no further comments, shall government motion 2, as amended by Mr Wood’s motion, carry? Carried.

We have another motion, government motion 3.

1040

**Mr Dunlop:** I move that section 22.1 of the Health Protection and Promotion Act, as set out in section 1 of the bill, be amended by adding the following subsection:

“Making the physician report

“(1.1) A physician who makes a physician report on an applicant described in subsection (1) may require the applicant to submit to an examination, base line testing, counselling or treatment for the purpose of making the report.”

It permits the physician making the report to request that an applicant submit to an examination on baseline testing or counselling or treatment; that means the person asking for the report.



**Mr Kormos:** Garfield's explanations of these amendments are like referring to the dictionary for a reference and finding the definition of "impeccable" to be, well, "impeccable."

Once again, this expands the power of the physician who's called upon to make the physician report to compel the applicant to do a number of things at the discretion of that physician as part of his or her compiling of the report. Again, does it create hurdles for the applicant? Yes, it does. I appreciate that not everybody is going to be happy with that, but it permits a physician—and it isn't compulsory—to require, among other things, to take a look at counselling, and more important—and this is in response to the medical officer of health, because the medical officer of health made it quite clear that our medical officers of health have a great deal of power already to collect evidence of communicable diseases from any number of people in the community—that their scope and focus was on a public health basis.

The critical consideration here is the issue of baseline testing, which you will recall was referred to specifically by the medical officer of health last week as something that was absent from the bill as it stood then. This is very much in response to the concerns raised and addresses head-on the concerns raised by the medical officer of health. I think we should take the medical officer of health's advice and recommendation in that regard and pass this amendment, appreciating that it will not please everybody.

**Mr Levac:** Having read this, and my previous question coupled together, as Mr Kormos suggested, I have an understanding that this does not interfere with the individual's personal responsibility to follow a process and a path. Where I would suggest it might be advantageous once the bill passes is for organizations that may or may not be affected by this particular piece of legislation to do—shall I call it—a professional development workshop to ensure that they understand, as part of their response to this, what steps can be taken and how they can be taken. Having asked the question the first time about the other amendment, for clarification purposes, how quickly we can start the process, with that balance Mr Kormos is talking about to narrow the scope in which this can apply, under comments by the medical officer of health, it seems to me to be putting on to the shoulders of the individuals that request the reporting certain steps to be taken. Then it should be made very clear how to respond to that. Maybe, going along with the idea of trying to protect as much as possible the individual's rights and freedoms and also the medical officer of health's responsibility for the public good, I can support the amendment with the understanding that there needs to be very strong and purposeful professional development to ensure that everyone knows what steps to take to get the treatment as quickly as possible, if indeed they end up being exposed.

**Mr Bob Wood:** I'm not going to support this amendment. I'm going to abstain on it unless it's changed. I don't think anyone who is competent should be required to take counselling or treatment. I think that's wrong in

principle and I want to put that on the record. Unless there's unanimous consent, obviously, we can't remove counselling or treatment, but I think it's wrong in principle to require someone who is competent to take counselling or treatment. I think they can make that decision. If they don't want the counselling or don't want the treatment, I don't think they should be required to take it.

**Ms Mushinski:** It's just "may."

**Mr Bob Wood:** No, no. It's mandatory. The doctors could say you have to take counselling and you have to take treatment. I think that's wrong in principle.

**The Vice-Chair:** Any other comments?

**Mr Kormos:** Could you call the question, Chair?

**The Vice-Chair:** All right. Mr Dunlop moved government motion number 3. Shall the motion carry? Carried.

We have government motion number 4.

**Mr Dunlop:** I move that subclauses 22.1(2)(b)(i) and (ii) of the Health Protection and Promotion Act, as set out in section 1 of the bill, be struck out and the following substituted:

"(i) to have it delivered to an analyst or a member of a class of analysts specified in the order to have the sample analyzed, and

"(ii) to provide the applicable analyst with the addresses for service of the following persons, if the medical officer of health has those addresses: the applicant, the physician of the applicant, the person from whom the sample was taken and the person's physician; and"—and that's going to take us on to the next section.

There are two comments I'd like to make on this. We are doing this to clarify where the reports about the blood analysis and the notices about the reports are to go, namely, the applicant and the physician and the subject of the order and the physician, if the medical officer of health actually has their addresses. It also clarifies whether he is obliged to deliver a notice to the subject—only if the analyst succeeded in delivering the report of the blood sample results to the subject's physician.

**Mr Kormos:** Not quite. It goes beyond that, Mr Dunlop because, you see, the previous section's (ii) restricted the number of people whose addresses had to be provided to the analyst, and that made it difficult to comply with subclause (c)(ii). What (ii) does here is effectively create consistency between (ii) of clause (b) with (ii) of clause (c) and parallel them. But I suspect it was the result of an oversight in the original drafting of the bill and this cleans up that oversight.

**The Vice-Chair:** All right. Any other comments? Seeing none, shall government motion number 4 carry? Carried.

We have government motion number 5.

**Mr Dunlop:** I move that subclauses 22.1(2)(c)(ii) and (iii) of the Health Protection and Promotion Act, as set out in section 1 of the bill, be struck out and the following substituted:

"(ii) make reasonable attempts to deliver a report on the results of the analysis to the physician of the person from whom the sample was taken,

“(iii) make reasonable attempts to deliver, to the person from whom the sample was taken, a notice that the analyst delivered the report mentioned in subclause (ii) if the analyst succeeded in delivering the report under that subclause,

“(iv) make reasonable attempts to deliver a report on the results of the analysis to the physician of the applicant, and

“(v) make reasonable attempts to deliver to the applicant,

“(A) a notice that the analyst has made reasonable attempts to deliver a report on the results of the analysis to the physician of the applicant, and

“(B) a recommendation in writing that the applicant consult his or her physician for a proper interpretation of the results of the analysis.”

**The Vice-Chair:** Any comments, Mr Dunlop?

**Mr Dunlop:** No.

**The Vice-Chair:** Any other comments?

**Mr Kormos:** Once again, this is cleaning up some less than precise drafting in the original bill.

**Mr Levac:** Just as a question of clarification, when the results of the analysis are sent to the physician, is the rationale behind that to avoid the individual misinterpreting the results, so that the physician would have the responsibility to make sure the results are not misinterpreted?

**Mr Dunlop:** Yes.

**The Vice-Chair:** No other comments? Shall government motion number 5 carry? Carried.

We have government motion number 6.

1050

**Mr Dunlop:** I move that section 22.1 of the Health Protection and Promotion Act, as set out in section 1 of the bill, be amended by adding the following subsection:

“Health Care Consent Act, 1996

“(4.1) The Health Care Consent Act, 1996 does not apply to the taking of a sample of blood under clause (2)(a).”

It's our feeling that this particular amendment strengthens the bill as well.

**Mr Kormos:** Once again, this addresses an observation made by the medical officer of health when he was here before the committee during the course of questions put to the medical officer of health.

**The Vice-Chair:** Any other comments? Shall government motion number 6 carry? Carried.

There are no other amendments to this section. Are there any comments before I move section 1? Shall section 1, as amended, carry? Carried.

There are no amendments to section 2. Are there any comments on section 2? Shall section 2 carry? Carried.

Section 3: I think there is one government amendment.

**Mr Dunlop:** I move that section 97 of the Health Protection and Promotion Act, as set out in section 3 of the bill, be amended by adding the following clauses:

“(c.1) prescribing the information that a physician report as defined in section 22.1 must or may contain;

“(c.2) prescribing a form for a physician report as defined in section 22.1 and requiring that the report be in the prescribed form;”

This is to provide regulation-making authority that provides the minister with the power to make regulations prescribing the information that a physician report must contain in the physician report form itself.

**Mr Kormos:** First of all, let's understand that the Lyn McLeod amendment that was moved and passed at the last committee hearing, also to section 97, was essential to generate the capacity by regulation to create regulation around privacy considerations.

I've got to tell the sponsor of this bill, I've seen increasing use of regulation over the course of the years I've been here. I don't like it. This government has passed whole bills that consist of nothing more than a shell, and then everything is contained in regulation. Regulation, as you know, is done behind closed doors. It's not necessarily done without consultation and it indeed can be done with no consultation. We have no control over that. The government has a majority and it has used that majority to ram through that type of legislation consistently.

I am prevailing upon the government today to assure everybody that in the course of developing regulations around the Lyn McLeod amendment—paragraph (d), for instance, the privacy issues—that in preparing regulations around all of what this expanded section will be, all parties be consulted. Again, this government has received communications from any number of groups, but I think it's imperative that the personnel being considered and the passage of the bill be consulted in that regard. I'm talking about front-line emergency service people. I think that's the broadest way of putting it. But any number of communities and people in our community have expressed concern, and I think this is the stage at which—because the regulations really are the crux of it. The regulations are what will make this bill work in an effective, fair and least intrusive way, or not. All I can do is plead with the government to ensure that that consultation with everybody takes place during the drafting of those regulations. The regulations are critical to this bill.

I'm glad the government accepted Liberal amendment, paragraph (d), for privacy issues. Again, these two amendments are valuable as well because the bill doesn't do that—the bill, perhaps, should have done it—and so we couldn't debate it. But the bill doesn't. That's why it's unfortunately being delegated to regulatory power. So be it. But please, you have some degree of control, I hope, over your cabinet.

**Mr Bob Wood:** We're doing our best.

**Mr Kormos:** Please use your influence to ensure that there's full consultation in the development of these regs.

**Mr Dunlop:** If I could respond very briefly to that, I just want to personally guarantee you—I want you to know that I'm going to keep a very close eye on where this bill goes from here, on the implementation period, on the educational aspects that may be required with this bill



as well. I understand it's not easy from this point on, but I want to personally guarantee that I will.

**Mr Kormos:** You know what? I expect the opposition critics will be keeping a close eye on that too.

**Mr Dunlop:** Would that be you, Mr Kormos?

**Mr Kormos:** It would be, and my counterparts.

**Mr Levac:** As Mr Kormos pointed out, there were some concerns raised, and I do want to give my health critic Lyn McLeod credit for looking at that concern that was raised and the government for the paragraph they accepted.

Just a voice to echo the same concern, that within the regulations, if they're considered to be of value for the implementation of this particular bill and the process that's required to assist the emergency workers, the good Samaritans and other people who may come in contact, we would be notified of any changes or the types of regulations that are going to be looked at in order for that to happen. Basically, our concern has been voiced as well.

**The Vice-Chair:** Any further comments? Seeing none, shall government motion number 7 carry? Carried.

Shall section 3, as amended, carry? Carried.

Any comments on section 4? Seeing none, shall section 4 carry? Carried.

Shall section 5, the short title, carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 105, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Thank you, I'll do so.

I just want to congratulate the members from all sides for their co-operation on this bill, and also the stakeholders, the emergency services people who have been here throughout the bill.

**Mr Kormos:** I hope nothing happened to Mr Gill this morning, nothing negative?

**Ms Mushinski:** No.

**Mr Kormos:** He's OK?

**Ms Mushinski:** Yes.

**The Vice-Chair:** Thank you. The committee is adjourned.

*The committee adjourned at 1058.*





## CONTENTS

Thursday 13 December 2001

<b>South Asian Heritage Act, 2001, Bill 98, <i>Mr Gill</i> / <b>Loi de 2001 sur l'héritage sud-asiatique</b>, projet de loi 98, <i>M. Gill</i> .....</b>	<b>J-711</b>
<b>Health Protection and Promotion Amendment Act, 2001, Bill 105, <i>Mr Dunlop</i> / <b>Loi de 2001 modifiant la Loi sur la protection et la promotion de la santé</b>, projet de loi 105, <i>M. Dunlop</i> .....</b>	<b>J-712</b>

### STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

#### **Chair / Président**

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

#### **Vice-Chair / Vice-Président**

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Toby Barrett (Haldimand-Norfolk-Brant PC)

Mr Marcel Beaubien (Lambton-Kent-Middlesex PC)

Mr Michael Bryant (St Paul's L)

Mr Carl DeFaria (Mississauga East / -Est PC)

Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Mrs Tina R. Molinari (Thornhill PC)

#### **Substitutions / Membres remplaçants**

Mr Garfield Dunlop (Simcoe North PC)

Mr Dave Levac (Brant L)

Ms Marilyn Mushinski (Scarborough Centre PC)

Mr Bob Wood (London West PC)

#### **Clerk / Greffier**

Mr Tom Prins

#### **Staff / Personnel**

Mr Michael Wood, legislative counsel













3 1761 11465798 4